House Calendar No. 207.

63D CONGRESS, *2d Session.* | HOUSE OF REPRESENTATIVES. | REPORT No. 1176.

INVESTIGATION OF THE BEHAVIOR OF JUDGE EMORY SPEER.

OCTOBER 2, 1914.—Referred to the House Calendar and ordered to be printed.

Mr. WEBB, from the Committee on the Judiciary, submitted the following

REPORT.

[To accompany H. Res. 234.]

The Committee on the Judiciary, having had under consideration House resolution 234, to authorize the Committee on the Judiciary to inquire into and concerning the official conduct of Emory Speer, United States district judge for the southern district of Georgia, beg to report to the House of Representatives that a subcommittee of the Committee on the Judiciary, consisting of Representatives Webb, FitzHenry, and Volstead, was appointed to take testimony in the investigation of the behavior of Judge Emory Speer, United States judge for the southern district of Georgia, and that the subcommittee sat in the cities of Macon and Savannah, Ga., and examined numerous witnesses touching their knowledge of the alleged misbehavior of Judge Speer. The subcommittee made a report to the Committee on the Judiciary, which report is herewith submitted, setting forth in detail the charges against said judge and the evidence adduced under each charge, and concluding their report with a recommendation that no further proceedings be had with reference to House resolution 234.

The Committee on the Judiciary considered the evidence and the report and came to the conclusion that no further proceedings should be had with reference to said resolution, and the Committee on the Judiciary beg to report the same to the House and recommend that no further proceedings be had with reference to said resolution.

COMMITTEE ON THE JUDICIARY.

HOUSE OF REPRESENTATIVES.

SIXTY-THIRD CONGRESS.

EDWIN Y. WEBB, North Carolina, *Chairman.*

CHARLES C. CARLIN, Virginia.
JOHN C. FLOYD, Arkansas.
ROBERT Y. THOMAS, JR., Kentucky.
H. GARLAND DUPRÉ, Louisiana.
WALTER I. McCOY, New Jersey.
DANIEL J. McGILLICUDDY, Maine.
JACK BEALL, Texas.
JOSEPH TAGGART, Kansas.
LOUIS FITZHENRY, Illinois.
JOHN F. CAREW, New York.

JOHN B. PETERSON, Indiana.
JOHN J. MITCHELL, Massachusetts

ANDREW J. VOLSTEAD, Minnesota
JOHN M. NELSON, Wisconsin.
DICK T. MORGAN, Oklahoma.
HENRY G. DANFORTH, New York.
GEORGE S. GRAHAM, Pennsylvania.
WALTER M. CHANDLER, New York.

A. L. QUICKEL, *Clerk.*

Mr. WEBB, chairman of the special subcommittee of the Committee on the Judiciary, appointed to investigate charges of official misconduct on the part of Judge Emory Speer, judge of the United States Court for the Southern District of Georgia, submitted the following

SPECIAL SUBCOMMITTEE REPORT.

Mr. Chairman, your special subcommittee, having had under consideration the following House resolution:

[H. Res. 234, Sixty-third Congress, first session.]

Whereas on the sixteenth day of August, nineteen hundred and thirteen, the Attorney General of the United States transmitted to the Committee on the Judiciary of the House of Representatives a report of a special examiner designated by the Attorney General to investigate various charges of alleged misconduct of Emory Speer, a United States district judge for the southern district of Georgia, which charges had been brought to the attention of the Department of Justice; and

Whereas the charges embodied in said report are accompanied by exhibits and affidavits and are of such grave nature as to warrant further investigation: Therefore be it

Resolved, That the Committee on the Judiciary be, and it is hereby, authorized to inquire into and concerning the official conduct of Emory Speer, United States district judge for the southern district of Georgia, touching his conduct in regard to the matters and things set forth in said report, and further to inquire whether said judge

has been guilty of any misbehavior for which he should be impeached, and report to the House of Representatives the conclusions of the committee in respect thereto, with appropriate recommendations; and said committee is hereby authorized to send for persons and papers, administer oaths, take testimony, employ a clerk and stenographer, if necessary, and to appoint and send a subcommittee whenever and wherever it may be necessary to take testimony for the use of said committee; the said subcommittee while so employed shall have the same powers in respect to obtaining testimony as are herein given to said Committee on the Judiciary, with a sergeant at arms, by himself or deputy, who shall serve the process of said committee and the process and orders of said subcommittee and shall attend the sittings of the same as ordered and as directed thereby; and that the expense of such investigation shall be paid out of the contingent fund of the House; that said Committee on the Judiciary or subcommittee thereof shall have power to sit during the sessions of this House or in vacation.

Your special subcommittee made a trip to the southern district of Georgia, leaving Washington on the evening of Saturday, January 17, and arriving at Macon, the seat of the court, on the evening of the following day. Monday morning, January 19, at 10 o'clock, the subcommittee opened its public hearings in the United States court room in the Federal building at Macon, and examined witnesses who were caused to appear for the purpose of giving testimony. These hearings were held continuously throughout the week, ending Saturday, January 24. The committee then went to Savannah, Ga., in said district, and examined witnesses during the entire of the following week, concluding its hearings there on Saturday, January 31.

All of the hearings were public. Judge Speer attended each session of the committee and was accompanied by counsel, who were permitted to cross-examine the several witnesses.

The subcommittee examined witnesses whose evidence tended to support the charges made against Judge Speer, as follows:

1. That he had violated section 67 of the Judicial Code in allowing his son-in-law, Mr. A. H. Heyward, to be appointed and employed in offices and duties in his court.

2. That he had violated the bankruptcy act in allowing compensation in excess of the provisions of that act to a trustee who was his personal friend.

3. That he had violated the laws as to drawing jurors.

4. That he had violated the mandate of the Supreme Court of the United States.

5. That he had been guilty of the oppressive and corrupt use of his official position in deciding cases unjustly in favor of his son-in-law.

6. That he was guilty of unlawful and corrupt conduct in proceedings in cases wherein his son-in-law had a contingent fee.

7. That he was guilty of corrupt and unwarranted abuse of his official authority in using court officers who were paid by the Government as private servants without rendering any service to the Government.

8. That he was guilty of oppressive and corrupt conduct in allowing the dissipation of assets of bankruptcy estates in the employment of unnecessary officials and the payment of excessive fees.

9. That he was guilty of oppressive and corrupt abuse in granting orders appointing receivers for property without notice to the owners and without cause, resulting in great loss to the parties.

10. That he was guilty of oppressive and corrupt abuse of authority in refusing to allow the dismissal of litigation for the purpose of permitting relatives and favorites to profit by the receipts of large fees;

11. That he was guilty of improper, if not a corrupt, abuse of authority in taking, or causing to be taken, money from the court funds for his private use;

12. That he was guilty of oppressive conduct in entertaining matters beyond his jurisdiction, fining parties, and the like;

13. That he was guilty of unlawful and oppressive conduct in denying the mandate of the Circuit Court of Appeals;

14. That he was guilty of oppressive conduct in allowing money to remain on deposit without interest in banks in which relatives or friends were interested;

15. That he was guilty of allowing excessive fees to receivers for improper purposes and also corrupt conduct in raising the amount of fees allowed to others in order that his son-in-law might profit thereby;

16. That he was guilty of attempted bribery of officials appointed to act as custodians;

17. That he was guilty of oppressive conduct in unlawfully seizing and selling property;

18. That he was guilty of the excessive use of drugs; and,

19. That he was guilty of general unlawful and oppressive conduct for his own private ends.

THE EVIDENCE UPON THE SEVERAL CHARGES.

The following is a digest of the evidence taken and the facts adduced:

ALLEGED VIOLATION OF SECTION 67, JUDICIAL CODE, IN ALLOWING HIS SON-IN-LAW, A. H. HEYWARD, TO BE APPOINTED TO AND EMPLOYED IN OFFICES AND DUTIES IN HIS COURT.

TESTIMONY OF MR. R. COLTON LEWIS.

(Pages 1263–1306.)

Mr. Lewis stated he was a special agent employed by the Department of Justice, and had made a partial examination of the records of the court in the southern district of Georgia, relating to bankruptcy matters. He then identified a letter written to himself by Mr. J. N. Talley, and the letter was read into the record by the clerk. This letter is dated July 5, 1913, and in it Mr. Talley says that the fees received by him in all cases in the Federal court, including masters' fees, were shared with Mr. A. H. Heyward, the son-in-law of the judge. Mr. Lewis was then requested to read the list of cases prepared showing the connection of Mr. A. H. Heyward, and his partner, Mr. J. N. Talley, with the bankruptcy cases. He then read into the record a list of cases showing the employment of either Mr. Heyward or Mr. Talley, or the firm of Talley & Heyward, as receiver, custodian or trustee, or attorneys for receiver, custodian or trustee.

In addition to the oral evidence relative to fees allowed Mr. Heyward presented during this investigation, a partial list of the cases in which the firm of Judge Speer's son-in-law received fees, nearly all of them being allowed by the court, has been prepared, and it shows

that Talley & Heyward received as attorneys, mostly in bankruptcy cases, acting for receiver and trustee, during the years from 1906 to 1912, $13,600.42, and that they received as fees to Mr. J. N. Talley as standing master during the same period $9,126; also that they received as receiver and trustee $14,161.70 and fees to Mr. J. N. Talley as special master $1,886.50. The total amount of fees shown on this partial list is $38,794.62, and it should be noted that fees in some of the cases on the list are omitted. As the list was furnished by Mr. Talley it is not understood why the amount of the fees in these cases is not mentioned, unless it is because his records did not show the amount received. It has been stated heretofore that Mr. Heyward, Judge Speer's son-in-law, received one-half of the earnings of this firm, including all the fees of Mr. Talley as standing master and special master. See Mr. Talley's letter, Exhibit 18–A. The list of fees mentioned follows:

Fees allowed Talley & Heyward July 1, 1906, to Dec. 31, 1912.

Title of case.	Capacity.	Amount.
J. D. Shi, bankruptcy	Attorney for receiver	$50.00
J. D. Shi, bankruptcy	Attorney for trustee	150.00
J. J. Flahive, bankruptcy	Attorney for bankrupt	75.00
Macon Implement Co., bankruptcy	Attorney for receiver	100.00
W. T. Lawson & Co., bankruptcy	Attorney for trustee	20.50
Memeger vs. Postal Tel. Co	Attorney for plaintiff	310.84
O'Neil vs. Sou. Ry	do	100.00
Taylor vs. Cabaniss	Attorney for defendant	.....
Dana Bragg Sta. Co., bankruptcy	Attorney for trustee	100.00
Dublin Cooperage Co., bankruptcy	Attorney for bankrupt	112.50
Meadows Co., bankruptcy	do	128.75
Fishfish, bankruptcy	Attorney for trustee	62.50
W. B. Stokes, bankruptcy	Attorney for bankrupt	124.50
McRee Lumber Co., bankruptcy	Attorney for trustee	125.00
E. Becker, bankruptcy	Attorney for bankrupt	145.00
W. J. Locke, bankruptcy	do	350.00
W. J. Gilbert, bankruptcy	Attorney for trustee	155.00
L. C. Ricks Co., bankruptcy	Attorney for bankrupt	75.00
Sheehan Co., bankruptcy	do	69.55
G. Chandler, bankruptcy	Attorney for trustee	100.00
R. L. Cheek, bankruptcy	Attorney for trustce and receiver	300.00
S. E. Lime & C. Co. vs. Bibb, etc	.....	.....
Brown Wagon Co., bankruptcy	Attorney for trustee and receiver	1,700.00
Jackson Stores, bankruptcy	Attorney for trustee	350.00
Rockledge Supply Co., bankruptcy	Attorney for bankrupt	25.00
Flahive vs. U. S. Casualty Co	Attorney for plaintiff	.....
Baggott & Co. vs. Harris	.....	50.00
Funstan Supply Co., bankruptcy	Attorney for receiver	150.00
Crawford vs. Kirkland	Attorney for plaintiff	.....
Henderson vs. Phillips	do	.....
Graves vs. Ashburn	do	.....
Cit. Furn. Co., bankruptcy	Attorney for bankrupt.....about..	100.00
W. J. Bush, bankruptcy	Attorney for bankrupt	50.00
Minona Min. Sprgs., bankruptcy	Attorney for trustee	100.00
Phillips, bankruptcy	Attorney for receiver	100.00
Kilgore vs. Haygood	Attorney for plaintiff	50.00
Northup vs. Col. Lumber Co	do	.....
Gray & Mitchell, bankruptcy	Attorney for trustee	275.00
——— vs. Phillips et al	Attorney for receiver	2,500.00
McRee Bros. vs. A. C. L	Attorney for plaintiff	.....
J. Brown, bankruptcy	Attorney for trustee	150.00
P. Orth, bankruptcy	Attorney for trustee and receiver	200.00
Rebecca Lumber Co., bankruptcy	do	516.67
Porter vs. Swindell	Attorney for receiver	350.00
A. D. Oliver, bankruptcy	Attorney for trustee	1,000.00
Mize & Oliver, bankruptcy	Attorney for creditors	162.50
Northrup vs. Clements	Attorney for plaintiff	.....
Northrup vs. Troup	do	.....
Bainbridge Gro. Co. vs. A. C. L	do	.....
——— vs. City Bainbridge	do	.....
U. S. vs. A. C. L	Attorney for defendant	.....
Brunswick Shingle Co., bankruptcy	Attorney for trustee	50.00
Goins & Rustin	Attorneys for trustee and receiver	125.00
Jesup Manf. Co., bankruptcy	Attorneys for trustee	200.00

Fees allowed Talley & Heyward July 1, 1906, to Dec. 31, 1912—Continued.

Title of case.	Capacity.	Amount.
Hazel Hurst Mercantile Co	Attorneys for trustee and receiver	$250.00
Watson vs. Hester	Attorneys for plaintiff	
Armour Fert. Wks. vs. Hinson Bro	do	
Bell vs. Burton	do	
Southern Elec. Co., bankruptcy	Attorneys for receiver	1,125.00
H. C. Allen, bankruptcy	Attorneys for trustee and creditors	225.00
Tipton vs. Smith	Attorneys for plaintiff	
R. A. Williams, bankruptcy	Attorneys for creditors and trustee	300.00
Beach Mfg. Co., bankruptcy		
T. A. Scott, bankruptcy	Attorneys for creditors	362.11
Standard & Son, bankruptcy	Attorneys for trustee	200.00
Perkins Mfg. Co	Attorneys receiver	300.00
Powell vs. Ins. Co	Attorneys	
Total		13,620.42

List of cases referred to J. N. Talley as standing master, one-half of compensation being received by A. H. Heyward.

Title of case.	
B. & L. Mfg. Co. vs. Blanchard	$156
Chandler Land Corp. vs. Baxter Co	500
Crawford vs. McCook	450
A. C. L. R. R. Co. vs. Gulf Line Ry	
H. H. Tift vs. Southern Ry	4,000
Bidwell vs. Huff	750
A. C. L. Ry. vs. Jackson Brown	
U. S. vs. Aycock	
Harnsberger vs. Kilpatrick	
J. J. Oliver vs. S. A. & N. Ry	3,000
Henry vs. Harris	
Ayres vs. Ocmulgee Land Imp. Co	270
	$9,126

List of cases in which J. N. Talley was appointed receiver or elected trustee or both, one-half of fees being received by A. H. Heyward.

Title of case.	Capacity.	Amount.
News Publishing Company	Trustee and receiver	$88.50
W. H. Tinker, bankruptcy	do	20.00
R. M. Butts, bankruptcy	do	552.97
L. F. Haskins, bankruptcy	Trustee	52.00
P. H. Maddox, bankruptcy	Trustee and receiver	83.84
Abbeville Trading Company	Trustee	105.66
Telfair Mfg. Company, bankruptcy	Trustee and receiver	289.94
T. S. Yates, bankruptcy	Trustee	190.40
Jaudon Furniture Co	Trustee and receiver	120.92
Southern Cotton Mills	Trustee	440.00
R. H. Plant, bankruptcy	Receiver	500.00
Do	Trustee	1,764.58
Minona Mineral Springs Co	Receiver	58.26
J. C. Tracy Co., bankruptcy	do	300.00
		4,577.07

List of cases referred to J. N. Talley as special master to fix fees.

Title of case.	
McKenna Shoe Co., bankruptcy	$50.00
Turner & Company	25.00
D. Lamar Turner	35.00
B. K. Cross	10.00
E. O. Williams	25.00
Erie Lumber Company	120.00
W. A. Baker	50.00
E. J. Leben	15.00
W. B. Lewis	15.00
C. H. Harper	35.00
J. J. Parks	30.00
Hataway	55.00
Jesse McCormick	15.00
Bibb Plumbing & Heating Co	37.50
J. D. Turner	30.00
Rountree, Knight & Coleman	72.65
G. W. Twilly	40.00
M. C. Peavy	40.00
Stewart Taylor Co	40.00
B. G. Knight	20.00
Rhodes Brothers	15.00
J. J. Toole, bankruptcy	20.00
Culpepper & Cochran	15.00
Fenn Brothers	50.00
McArthur Sons Co	75.00
D. L. Barnhill	25.00
Robinson & Thomas	10.00
J. A. Ansley	25.00
J. B. Roberts	20.00
Harrison Brothers	30.00
W. L. Cook	10.00
Taylor Shoe Company	75.00
D. L. Barnhill	20.00
Spivey Trading Company	35.00
Tysor Cheatham Mercantile Co	25.00
Winebrew Company	325.00
C. I. Patterson	20.00
W. W. Jackson	25.00
Wiley Williams	15.00
E. Hochman	25.00
W. S. Bell & Son	50.00
H. B. McDaniel	25.00
H. Burns	25.00
W. A. Hill	40.00
Joseph Burns	25.00
C. T. Bailey	15.00
Garfield & Combs Co	10.00
Birch Hardware Co	50.00
J. L. Bostick	35.00
J. R. King	15.00
Dunn Bros	19.00
J. R. Robbins	25.00
Outler Mercantile Company	20.00
H. W. Elkins	25.00
C. B. Coleman	20.00
E. B. Harris	85.00
Pepsicola Company	18.00
Abe Lesser	40.00
H. H. Chandler, bankruptcy	15.00
	1,886.50

List of cases in which A. H. Heyward was appointed receiver or elected trustee or both, from July 1, 1905, to December 13, 1913.

Title of case.	Capacity.	Amount.
F. H. Brently	Trustee	$206.00
B. Mandle & Son	Receiver	350.00
Hines & Vaughn	Receiver and trustee	512.88
F. W. Shelton	do	109.71
J. T. Taggart	Receiver	80.00
W. L. Moye	Trustee	.....
Marx Zarks	Trustee and receiver	53.34
I. W. Garner	Trustee	.....
W. J. Braswell	Trustee and receiver	260.00
C. Watchel Bros	do	1,000.00
Beale Bros. Co	Receiver	38.26
A. W. Drew	Receiver and trustee	375.00
Eastman Supply Company	Receiver	200.00
Eastman Supply Company	Trustee	.....
J. T. Croon	Receiver	250.00
I. A. Adams	do	300.00
I. A. Adams	Trustee	.....
G. W. Wheatley	Receiver	800.00
W. H. Lee	do	500.00
Winn Johnson Company	do	302.20
Winn Johnson Company	Trustee	81.15
Orr Smith Grocery Co	Receiver	39.73
Orr Smith Grocery Company	Trustee	138.95
R. Levison	Receiver	31.06
R. Levison	Trustee	104.26
L. S. McClendon	Custodian	18.50
W. B. Outler	Receiver	33.39
W. B. Outler	Trustee	127.86
Hyman Slater	do	72.00
C. C. Cox	Receiver	25.40
C. C. Cox	Trustee	81.62
Union Dry Goods Company	do	115.37
M. A. Baker Company	Receiver	1,000.00
M. A. Baker Company	Trustee	230.00
J. Champagne	Trustee and receiver	460.00
H. C. Gilmore	Receiver	150.00
W. O. Willard	Receiver and trustee	400.00
Fain & Weaver	Receiver	300.00
Rouse & Williams	Trustee	284.75
J. F. Register	do	106.00
Bainbridge Trading Company	Receiver	400.00
Total		9,584.63
Grand total		38,794.62

Mr. Talley in preparing this list has omitted the fees received in 26 cases, and as the list is furnished in defense of Judge Speer in answer to the charge that his relatives and favorites have profited largely from the court business through his influence, it is probably fair to assume that the fees in the cases which Mr. Talley has failed to mention in the list were substantial. It is also noted that the list furnished by Mr. Talley does not include all the cases reported by the examiner of the Department of Justice, and the examination made by that official was limited and covered only two to three years. It therefore seems conservative to state that the fees received by this firm during the six years covered by the list furnished probably amount to at least $50,000, and it should be noted that by far the greatest proportion of these fees were received upon appointment or through employment which came about only through the action of the court, though indirectly.

In this connection it should be noted that Mr. Heyward, the judge's son-in-law, is a man of such limited ability that during all of the six years of his connection with the firm of Talley & Heyward he had never tried a case in court, and the testimony of several witnesses

was to the effect that he was not able to prepare a case for trial in the court of a justice of the peace.

The judge makes explanation in his reply of the manner in which Mr. Heyward received the appointments mentioned, showing that they were made by the referee in bankruptcy and not by himself. He also endeavors to show that this action is not in contravention of section 67 of the Judicial Code, which provides as follows:

> No person shall be appointed to or employed in any office or duty in any court who is related by affinity or consanguinity within the degree of first cousin to the judge of such court;

by arguing that the referee is a judge and holds a separate court, and that the provisions of the act do not prevent the employment of persons appointed in bankruptcy cases by the referee who are related to the judge of the court.

This contention is quite technical. The referees are appointed by the judge. They are simply officers created by him and, of course, are responsible to him for all their acts. A receiver or custodian appointed in this manner in bankruptcy cases is, in the opinion of the subcommittee, an employee or officer of the court, and the argument that they are not subject to the provisions of section 67 of the Judicial Code appears to be quite strained. All the duties of these officials, including the referee, are connected with the court business. It would be strange, indeed, if the section of the Judicial Code in question should be so construed as to place the referee as a separate court, and so defeat the manifest intention of the act, which is to prevent improper influence of family relationship in the administration of justice. The employment of Mr. Heyward as receiver and custodian in such cases is in violation of the spirit, certainly, if not the letter of the act.

In this connection attention is called to the fact that the judge's son-in-law has always shared equally in the fees of the standing master of the court as well as in his fees as special master. By sharing these fees Mr. Heyward is again brought within the spirit of the provisions of section 67 of the Judicial Code, and it can not be argued in this instance that the appointments are made by the referee, as Judge Speer made the appointments, Mr. Talley as standing master and special master, and it would hardly be argued that he was not aware that his son-in-law was sharing in the fees received from these appointments. The fees allowed to standing masters and special masters during the life at the partnership of Talley & Heyward amounted to about $11,000 and one-half of this amount went direct to Judge Speer's son-in law as a result of his appointment of Mr. Talley as master. These facts appear to show a clear violation, at least, of the spirit of the statute mentioned.

Judge Speer denies in his answer (257–264) that he had ever appointed Mr. Heyward to any position or that he had suggested to any referee that such appointment should be made. In connection with this statement it is noted there was testimony presented during the investigation to the effect that Judge Speer had intimated to Referee W. L. Lane that his son-in-law should be appointed to such positions, and that this intimation was acted upon by Mr. Lane.

Attention is also invited to the letter of Judge Speer to Referee Alexander Proudfit, appearing on page 259 of the judge's brief, which reads as follows:

HIGHLANDS, N. C., *June 28, 1905.*

MY DEAR ALECK: With regard to your inquiry as to Hasell, you had best look at the statute and determine for yourself. I haven't got it here. Certainly it would seem that if the trustee thought proper to employ him as an attorney he ought not to be barred from the privilege of earning his livelihood because he is my son-in-law. I, however, have never attempted to control trustees in the selection of counsel and would certainly not do so in this case. Of course I will be very grateful for anything we can properly do for him. * * *

EMORY SPEER.

This letter was written in reply to a communication from Mr. Proudfit, asking the judge whether there would be any impropriety in appointing Mr. Heyward custodian or receiver, and, while the judge's answer is couched in courteous language, it is very plain from his words that he wishes his son-in-law to receive the assistance of the referee.

It is also true that the firm of Judge Speer's son-in-law has been employed as attorneys for trustees and receivers in many cases, and as there is a rule of court requiring such officials to first obtain authority from court before employing counsel, it is apparent that Judge Speer must have consented to if not authorized the employment of his son-in-law in these cases.

The list of cases in which Talley & Heyward received fees, showing the capacity in which they were employed and, in the majority of cases, the fees received by them, will give an idea as to the extent of this practice of employing the son-in-law and his division of fees with Judge Speer's appointees, the total amounting to $38,794.62. This sum does not represent all of the fees received by the firm from this source. When legal reputation and lack of experience and ability of Mr. A. H. Heyward is considered in connection with the fact that Mr. Talley was Judge Speer's secretary for a number of years before this partnership was formed, it becomes plain that this large amount of money was received by them almost entirely through their relationship to the court.

It is noted that in Judge Speer's brief he presents figures showing the assets in bankruptcy cases, the expenses of administering estates, and the percentage which the expenses bear to the assets, for the several judicial districts represented by the members of the Judiciary Committee of the House of Representatives, covering the years from 1899 to 1912, inclusive, except 1905, which is omitted. He endeavors to show from these figures that the expenses of administering bankruptcy estates in his district compare well with like expenses in the other districts, in spite of a large amount of testimony to the effect that his son-in-law and others have received excessive fees from bankruptcy cases.

It is submitted, however, that a comparison of general averages such as is presented by him is of little value as a defense to the charge that his son-in-law has profited by relationship to the judge. The conditions and circumstances under which the assets in bankruptcy cases are administered are so varied and the classes of business differ to such an extent, that a comparison of this kind carries little weight. In a district such as the southern district of Georgia, which is almost entirely rural, with few large cities, the nature of the business coming into the bankruptcy court is such that large fees can be received in but comparatively few cases.

It is evident, therefore, that the conditions in each judicial district are so different that no proper comparison can be made.

In submitting these figures, however, the judge is unfortunate, as he has proved by them that the expenses of his district during the years his son-in-law has been connected with the court have been two and a half times as large as they were before his son-in-law was receiving the fees from this source.

The following table showing the expenses in his district from 1899 to 1906, as compared with the years after Mr. Heyward was connected with the court business; that is, from 1906 to 1912 will demonstrate that fact:

Southern district of Georgia.

Year.	Assets.	Expense.	Percentage.
1899	$543,166.20	$9,582.74	0.017
1900	319,401.53	2,041.16	.006
1901	113,939.58	8,881.80	.077
1902	95,121.75	12,101.42	.126
1903	158,984.21	11,054.44	.069
1904	327,500.24	12,501.55	.038
1906	235,773.27	22,773.00	.096
1907	183,316.63	17,537.33	.095
1908	244,456.15	27,673.91	.113
1909	314,070.04	38,552.98	.122
1910	1,206,718.78	79,387.39	.065
1911	284,209.36	62,336.75	.219
1912	364,090.74	71,095.12	.195

General average for years 1899 to 1904 before Mr. Heyward was connected with the court, 0.056.
General average for years 1906 to 1912 when Mr. Heyward was connected with the court, 0.129.

These figures show that the expenses of administering the bankruptcy courts in the district for the years 1899 to 1905, when the judge's son-in-law was not connected with the courts, amounted to only 5½ per cent of the assets, and that during the years 1906 to 1912, inclusive, when the judge's son-in-law was enjoying the patronage of the court, the expenses were 12.9 per cent of the assets, or nearly two and one-half times as much as they were before Mr. Heyward was receiving these fees.

ALLEGED OPPRESSIVE AND CORRUPT ABUSE OF AUTHORITY IN GRANTING ORDERS APPOINTING RECEIVERS FOR PROPERTY WITHOUT NOTICE TO THE OWNERS AND WITHOUT CAUSE.

CASE OF HECHT v. JOSEPH DRY GOODS CO.

TESTIMONY OF GEORGE S. JONES.

(Pages 1309–1315.)

Mr. Jones testified that he was an attorney practicing in the Federal court in the southern district of Georgia; that in the year of 1902 he was employed to represent the defendant in the above-mentioned case; that Judge Speer appointed a receiver without notice for about $6,000 in money and $60,000 worth of merchandise of the Joseph Dry Goods Co., on a bill filed by Hecht, alleging that Joseph was indebted to him for about $2,000; that application was made for

appeal from the appointment of a receiver to Judge Pardee, of the circuit court of appeals, who requested that the application be made to Judge Speer, as he was sensitive on the subject; that the hearing was then had before Judge Speer, who stated he would render his decision that night at his home, and asked the attorneys to meet there at 7 o'clock, stating that before rendering his decision he wished the attorneys to make an effort to settle the matter; that the attorneys assembled at Judge Speer's house and that the judge endeavored to persuade them to settle, and stated he would allow a fee from the estate to the attorneys involved, in case a settlement was made; that during the effort to persuade the attorneys to settle Judge Speer made the following statement: "* * * Now, you want to take the matter into your hands and settle it, because if you don't I will be compelled to write an opinion in the case which will ruin Joseph in the business world." That the next day he (Jones) again applied to Judge Pardee for an appeal, which was granted and a supersedeas bond fixed; that he presented the papers to the receiver appointed by Judge Speer, who declined to pay over the money held; that the attorneys for the plaintiff appeared before Judge Speer and took the records in the case away from the court so that the clerk could not get the appeal papers perfected before the expiration of the time limit; that he again presented the matter to Judge Pardee and explained the facts, stating that the receiver had refused to recognize the supersedeas; that Judge Pardee thereupon passed another order calling on the receiver to show cause why he should not be attached for contempt, and calling on the attorney for the plaintiff to show cause why he should not be attached for contempt for carrying the papers out of the jurisdiction; that Judge Speer wrote an opinion which was published in the Macon Telegraph which reflected upon him (Jones), stating that he had misled the judge; that he then prepared an affidavit to meet this opinion and filed it with the circuit court of appeals; that the circuit court of appeals upon hearing the case reversed Judge Speer.

Mr. Jones stated further (pp. 1324–1332) that in this case Judge Speer was wholly without jurisdiction and that the court of appeals so held upon argument of the appeal; that he considered the conduct of Judge Speer as arbitrary and harsh; that Judge Speer has made it a practice to appoint receivers without notice, and this action has been criticised severely by the court of appeals in several cases, naming the Recco Mining Co. case, the Bishop case, the Joseph Dry Goods case, and the Frank R. Mann case, and that the judge continued to appoint receivers without notice after this criticism.

The action of Judge Speer in appointing a receiver without notice to take charge of $6,000 in cash and $60,000 in merchandise upon a claim of less than $2,000 when no allegations of insolvency or other sufficient cause were made, appears to go beyond the bounds of reasonable discretion. It is thought proper to quote from the language of the circuit court of appeals in reversing Judge Speer in this case (120 Fed. Rep., p. 760):

> If the decree when rendered would be collectible, there is no necessity for seizing property for its satisfaction in advance of its rendition. The appointment of a receiver is an extraordinary remedy and can not be properly resorted to unless a necessity for it is shown. It follows that in a case like this a receiver should not be appointed unless the insolvency of the defendant debtor is shown. The court should not resort

to so harsh a measure when it is not alleged that the defendant has no property subject to execution with which to satisfy the decree when rendered; there having been no allegation or proof of the insolvency of the defendant against whom the decree for the debt is sought. It was not shown to be necessary for the court to take possession of the stock of goods and money for the purpose of making it available to the plaintiff to satisfy a decree he might obtain.

It does not appear that this warning from the court of appeals had any effect upon Judge Speer.

The judge appears to base his action in appointing the receiver without notice upon the prayer in the bill. If all courts took the property of the owners away from them without notice or opportunity to show the fallacy of the complaint against them, merely upon such bald statements without investigating them, as appears to have been his practice if the testimony of many of the prominent attorneys of southern Georgia is worth anything, all property rights would be exceedingly insecure.

As a matter of fact, however, the bill itself did not allege sufficient cause for appointing the receiver without notice and the court of appeals held that Judge Speer therefore acted without jurisdiction.

BEACH MANUFACTURING CO. CASE.

TESTIMONY W. W. LAMBDIN.

(Pages 2253–2273.)

Mr. Lambdin testified that he was an attorney by profession and had practiced in the southern district of Georgia for 25 years; that he was of counsel for the company in the bankruptcy proceedings against the Beach Manufacturing Co. which were instituted March 13, 1913. That immediately after the resignation of Mr. Isaac as referee in bankruptcy the firm of Isaac & Heyward was formed and that shortly after that, in rapid succession, three very important firms in his section of the State were brought into the bankruptcy court; namely, the Beach Manufacturing Co., the Gray Lumber Co. and the L. Carter Co.; that the petitions against these companies were filed by the firm of Isaac & Heyward and while they had other legal counsel associated with them Mr. Isaac took the lead in all the cases and handled them before the court. That the filing of these cases, which involved very large property interests, sent a shock through the entire commercial world of south Georgia; that receivers were appointed in these cases by Judge Speer, who retained the firm of his son-in-law, Isaacs & Heyward, as their counsel and the impression got abroad that these suits were filed with the cooperation of Judge Speer; that there was a general feeling of uneasiness and unrest and that the apprehension spread through the commercial world; nobody felt safe, and every concern which had past due bills thought it was marked for the next victim; that he was employed as counsel in all three of the cases mentioned.

Mr. Lambdin then testified relative to the Beach Manufacturing Co. case that Judge Speer without notice, in an ex parte hearing, appointed a permanent receiver for the company; that he did not even issue a rule requiring the company to show cause why the receiver should not be made permanent, but made the permanent order on the original petition; that the attorneys for the company

filed an answer denying any acts of bankruptcy and denying insolvency, and asked for a jury trial. That the attorneys also filed a petition asking for the vacation of the receivership, stating there was no necessity for it, that it was granted ex parte without a hearing, etc. That Judge Speer then issued a rule nisi against the attorneys who filed the suit against the company requiring them to show cause why the receivership should not be dissolved and the matter came on for hearing at Macon, Ga., April 3, 1913. That during the course of the hearing Judge Speer once or twice intimated to counsel that they should settle the case and finally said to Mr. L. A. Wilson, one of the attorneys for the company, that the case looked bad indeed for the defendant and apparently he had decided to continue the receiver in charge. The counsel for the company, among whom were Hon. Charles G. Edwards, M. C., and Judge V. E. Padgett, then conferred on the subject and decided that as Judge Speer had apparently made up his mind to continue the receiver in charge it would serve no good purpose to continue the hearing, and they therefore stated to the judge that the motion to dismiss the receiver would be withdrawn. That when the order dismissing the motion was drawn it was decided by consent of the counsel to include in it a provision by which the receiver might issue certificates for the purpose of borrowing $1,000. That Mr. Isaac in drawing up the order included a paragraph reciting that all parties consented to the receivership, and that the attorneys for the company objected to this, as they had not consented to the receivership, and had the provision stricken from the order. That when the order was finally completed and signed by Judge Speer it had no provision in it reciting that the receivership was consented to by the defendant. That when he next saw the order it was upon the trial of the main case held at Savannah, Ga., in September, 1913, and that he noticed the words "by consent" apparently in the handwriting of Judge Speer at the bottom of the order. That these words were very material, as they did not speak the truth and would have a material bearing on the question of expenses of the receivership; that on the trial of the case the jury found the Beach Manufacturing Co. to be solvent and the petition was dismissed; that the question as to the expense of the receivership then arose and that of course the insertion of the words "by consent" at the bottom of the order in question was very material. That these expenses were very heavy, one item alone, that of the fee of an accountant appointed by Judge Speer to go over the books of the company, amounting to $3,500; that the receiver through his lawyer applied for fee of $5,000 and the other expenses of the receivership were equally heavy.

Mr. Lambdin further testified that about a year previous to the time when the bankruptcy petition in question was filed against the Beach Manufacturing Co. by Messrs. Isaac & Heyward, as attorneys for creditors, a similar petition was filed against this company by other attorneys and the company having retained Talley & Heyward to defend them, it was able to have the case dismissed. Mr. Lambdin then proceeded to explain the injury done to the Beach Manufacturing Co. during the year in which it was held by the court in the custody of a receiver, stating that it had been nearly ruined. He testified further that in all three of the cases mentioned by him, Isaacs & Heyward being attorneys for creditors, necessarily their fees were contingent upon their success in having the concerns

adjudged bankrupt, as they would get a fee out of the estate in case of adjudication, and if there was no adjudication they would get no fee out of the estate. That on account of this fact Judge Speer was disqualified in all of these cases, and yet he presided in all three of them in the proceedings which took place before the investigation against him was started; that the attorneys for the companies discussed the question of disqualifying Judge Speer, but were advised that he would take it as a mortal affront and might put them in jail, and therefore they were afraid to suggest to him that he was disqualified. He stated he did not believe there was a lawyer in the United States who would dispute the proposition that Judge Speer was disqualified from trying these cases.

Mr. Lambdin was then handed the order which he mentioned in his testimony, bearing the two words written at the bottom in ink apparently in Judge Speer's handwriting, while the balance of the order is written on the typewriter. He again testified that the order was not a consent order, except as to the authority to borrow $1,000. Mr. Lambdin then read the order into the record (p. 2267), and later stated that the first he knew of the words "by consent" being written on the order was about September 15, 1913, while the order itself was dated April 4, 1913. He stated further that the jury in passing upon the question as to the solvency of the Beach Manufacturing Co. found the assets to be about $350,000 or $400,000, while the indebtedness of the company bonded and otherwise, amounted to $270,000. He testified further that the receiver for the Beach Manufacturing Co., Mr. Moss, employed the firm of Isaac & Heyward to represent him.

TESTIMONY OF MR. V. E. PADGETT.

(Testimony, 2323–2350.)

Mr. Padgett testified that he was an attorney by profession and had practiced in the southern district of Georgia since 1896; that he was of counsel for the defense in the Beach Manufacturing Co. case; that in the spring of 1912 a bankruptcy petition was filed against this company and the appointment of a receiver asked, and that Judge Speer refused to appoint the receiver ex parte, but issued a rule nisi requiring the company to show cause; that he, as general counsel for the company, employed the firm of Talley & Heyward to assist him and immediately prepared to defend the company; that when the rule nisi was heard the judge refused to appoint a receiver and dismissed the petition against the company; that shortly thereafter Messrs. Isaac & Heyward filed a petition in bankruptcy against the same company and Judge Speer, without notice, on an ex parte hearing, appointed a permanent receiver for the company and took its property away from it; that he and the other counsel of the company prepared a petition asking for the dismissal of the receiver and also in answer to the bankruptcy petition denied insolvency and asked for a jury trial; that during the hearing of the motion to dismiss the receiver, Judge Speer suggested to one of the company's attorneys—Mr. L. A. Wilson—that they were making a poor showing and that it appeared to be necessary to continue the receiver; that thereupon Mr. Wilson reported to the other attorneys, and after a consultation they decided to withdraw their motion; that Judge Speer at that time promised to give them an immediate trial of the

question of solvency; that he appointed as receiver a Mr. Moss and before Mr. Moss had even visited the property or been near it, authorized the employment of Isaac & Heyward to represent the said receiver; that when the order for the dismissal of the motion to vacate the receivership was drawn Hon. Charles Edwards, who was also of counsel in the case, suggested that they had better see the order which was being drawn, and that they then approached Mr. Isaac who had the order in his hand, and both he and Mr. Edwards read it; that the order had then been signed by Judge Speer and that the words "by consent" were not on it. Mr. Padgett then recited the circumstances relative to the administration of the estate pending the trial of its solvency by jury, which had been requested, and stated that Judge Speer made orders relative to the cutting of timber, etc., which were causing the property to be wasted, and that finally the question of disqualifying him on account of his son-in-law having a contingent fee in the case, was discussed; that there was considerable publicity given the matter, and that finally Judge Speer wrote a letter to Judge Pardee, of the circuit court of appeals, disqualifying himself, after which Judge Newman, of the northern district of Georgia, was designated to sit on the case; that in spite of this designation Judge Speer continued to pass administrative orders in the case and authorized the receiver to cut up valuable timber into crossties; that after considerable unpleasantness and some show of feeling on the part of Judge Speer he was persuaded to recuse himself in all matters relative to the case.

Mr. Padgett further testified that the case finally came to trial and the company was found to be solvent. He then testified in detail with regard to the injury done to the Beach Manufacturing Co. by being held in the court so long a time. In answer to a question from the chairman, Mr. Padgett stated he was quite positive that the order about which Mr. Lambdin testified was examined by himself and Congressman Edwards after it had been signed by Judge Speer and that the words "by consent" were not on it, but that when the company had been declared solvent by the jury and the question of costs arose, they were dumbfounded to find the words "by consent" at the bottom of the order, and that he and Mr. W. W. Lambdin and Mr. Edwards discussed the matter and agreed that the words "by consent" were in the handwriting of Judge Speer, and each stated that they were not on the order when they had examined it after it was signed by the judge.

Mr. Padgett then identified signed statements marked "Exhibits 31–B," "31–C," and "31–D" given by him to the agent of the Department of Justice during the investigation, and they were placed in the custody of the clerk to the committee. Mr. Padgett then testified, in response to questions, that the effect of the receivership on the Beach Manufacturing Co. has been to just about ruin it; that it may recover, but that it has just about been put out of business. He then explained the losses inflicted upon the company.

TESTIMONY OF J. C. MORECOCK.

(Pages 2350–2355.)

Mr. Morecock testified that he was deputy clerk of the United States court at Savannah, Ga., and he then identified an order on the

minutes of the court relative to the Beach Manufacturing Co. dated April 4, 1913, and was asked when the order was recorded. In response he stated that the order was made by Judge Speer while at Macon and came down to Savannah with other papers in the mails a few days thereafter, and that it was recorded in due course. In answer to questions of the chairman, however, Mr. Morecock admitted that he did not arrive at Savannah until April 9 and as the order was recorded by him it must have been put on the minutes some time later, although dated April 4. He stated the words "by consent" were on the order when it came down in the mails from Macon. Mr. Morecock testified further that it was the practice for the minutes of each day to be read and approved in the court the following morning, but in response to questions stated that the order in question was never read and approved in court but that it was an order in equity signed in Macon.

On cross-examination, Mr. Morecock stated he could not tell when the order was put in the minutes.

TESTIMONY OF MR. JOHN W. BENNETT.

(Pages 2425–2434.)

Mr. Bennett testified that he was an attorney by profession and a member of the law firm of Wilson, Bennett & Lambdin; that he was connected with the bankruptcy proceedings against the Beach Manufacturing Co., and that he and the other attorneys had been discussing the question of disqualifying Judge Speer, owing to his relationship to Mr. Heyward, whose firm were attorneys for the petitioning creditors, and that the matter was circulated freely. That shortly after this discussion they learned that Judge Speer had written a letter to Judge Pardee disqualifying himself. Mr. Bennett then read into the record a letter from Judge Speer to Judge Pardee. Judge Speer, however, declined to disqualify himself as to administrative orders touching the operation of the company, and that this caused considerable friction and confusion, and after the matter was again brought to his attention Judge Speer finally withdrew from the case entirely. Mr. Bennett gave in detail the troubles experienced by the attorneys in getting this done, and the fear they entertained that they might be punished for suggesting that Judge Speer disqualify. Mr. Bennett also testified that Judge Speer had passed an order authorizing the receiver for the Beach Manufacturing Co. (Mr. Moss) to cut good timber into crossties, and that much good timber was destroyed in this way; that after Judge Newman took charge of the case he passed an order stopping the receiver from this waste.

The evidence in this case shows that Judge Speer appointed a permanent receiver for the Beach Manufacturing Co., a very large and prosperous concern, without notice and upon an ex parte hearing upon a bankruptcy petition filed by the firm of his son-in-law, Isaac & Heyward. The evidence further shows that Judge Speer refused to dismiss the receiver appointed, although the defendant offered to pay the claims in full or make bond for their security. Also that the company resisted bankruptcy and upon a jury trial was found to be doubly solvent. The most censurable action of Judge Speer shown by the evidence in this case is in connection with the so-called "consent"

order signed by him. The evidence of Messrs. Lambdin, Padgett, Bennett, and Congressman Charles G. Edwards shows that the order in question when originally signed by Judge Speer did not bear the words "by consent," and that later, when the company had been found solvent by the jury and the question of costs arose, it was found that the words "by consent" in Judge Speer's handwriting appeared at the end of the order. Attention is especially invited to the affidavit of Congressman Charles G. Edwards, as Exhibit 31, in which he swears that he and Mr. Padgett examined the order after it was signed by Judge Speer and that the words "by consent" were not on it. In considering this charge against Judge Speer it should be remembered that the firm of the judge's son-in-law filed the petition in the case which was dismissed by the verdict of the jury, and that the costs which accrued while the company was in the hands of the receiver appointed by Judge Speer amounted to many thousands of dollars, which made the question as to whether the order in question was a consent order exceedingly important, especially to the judge's son-in-law, as his firm would undoubtedly receive a large fee from the estate of the company if the order were accepted with the words "by consent," and on the contrary this firm would probably be heavily involved in the expenses of the litigation if the order were construed without the words "by consent." Judge Speer does not deny that the words "by consent" were written by him, and he claims that the order was a "consent" order, despite the affidavit of Congressman Edwards and the testimony of the attorneys who have testified. The order is Exhibit 31–A.

McREYNOLDS v. CITY & SUBURBAN RAILWAY CO.

TESTIMONY OF MR. W. W. OSBORNE.

(Pages 2054–2071.)

Mr. Osborne stated that he represented the railway company in this case, and that Judge Speer causelessly took the property away from the company and put it in the hands of a receiver without notice and without the slightest excuse. Mr. Osborne then read a written statement of the facts in this case which was furnished by him to the examiner of the Department of Justice. (See record, p. 2054.) The substance of this statement is as follows: There were two competing railway systems in Savannah which had been cutting rates for a number of years and engaging in considerable litigation. While affairs were in this condition Judge Speer, on April 9, 1895, without notice and at the instance of one J. W. McReynolds, a citizen of Tennessee, appointed a temporary receiver for the City & Suburban Railway and ordered the company to show cause on May 1 why the receiver should not be made permanent. The petition for this receiver was filed by the firm of attorneys which had represented the competing system in previous litigation. The plaintiff in this petition, J. W. McReynolds, had purchased one bond on which his suit was based about 10 days prior to the filing of the suit, and it developed that he, McReynolds, was an uncle of Mr. Robert N. Hicks, one of the owners of the competing system.

Mr. Osborne stated he went to Tennessee in person to investigate this Mr. McReynolds and found he was a man over 60 years of age and without any means and made his living by odd jobs of carpenter work, etc. Mr. Osborne states he satisfied himself Mr. McReynolds had no means with which to invest in bonds, especially of a street railway company at a time when competition was so fierce that car-fare was reduced to one-half a cent per ride. He states the suit was not filed in good faith, and was collusive and started for improper motives in the railroad warfare. He stated, also, that Judge Speer had personal knowledge of all the facts in the case owing to the previous litigation between the railway systems, and yet despite this he placed the City & Suburban Railway in the hands of a receiver without notice upon the application of a party residing in another State who owned but one or two bonds purchased while the rate warfare was on, obviously for the purpose of litigation. He states further that there had been no default of interest on the bonds held by this party, and that there was absolutely nothing in connection with the petition of McReynolds that would have justified the summary appointment of a receiver without notice. He also stated the court proceedings previously had before Judge Speer put him in possession of every fact necessary to warn him of the circumstances, and that the summary appointment of the receiver in this case was a clean-cut violation of judicial discretion. The receiver appointed took charge of the property of the railway and demanded and received all the books and papers of the company, which were taken to the offices of the attorneys for the competing company. Mr. Osborne states his first thought was to regain possession of the property and that he went to Judge Speer at Macon and stated to him that his client would give bond in the sum of $250,000, if necessary, to regain the possession of the property, and that this bond was actually required by Judge Speer. This enormous bond exacted having been made, the receiver surrendered the property to the owners and the case was dismissed, but not until costs amounting to about $1,300 had been paid. He stated that Mr. Parsons, being a very rich man, was able to furnish the outrageous bond exacted, and but for this fact the arbitrary, tyrannical, and outrageous act of Judge Speer in appointing the receiver would have resulted in much greater loss of property than actually occurred. Mr. Osborne stated that he learned from Mr. Mayhew Cunningham, who acted as attorney for the trustee in accepting the bond mentioned, that when he went to Judge Speer's chambers in connection with the matter the judge made an effort to dissuade him from accepting the bond and that Mr. Cunningham will so state. He also stated that if Mr. Parsons had not been able to protect himself the railroad company might have been bankrupted by the action of Judge Speer.

The undisputed evidence in this case shows that Judge Speer appointed a receiver for a great city railway system without notice upon a bill filed by the holder of one bond of the company, bought during the litigation for the purpose of instituting a suit not in good faith. The evidence shows that there was no good reason for this drastic action by the judge, and no allegation of insolvency or irreparable injury, no default having been made in the interest or payments upon the bond upon which the suit was filed. It is shown further that this railway company was required to make bond in

the sum of $250,000 and to pay the expenses of the litigation amounting to $1,300 before it was able to regain possession of its property. Only the fact that the owners of this railway company were in possession of large resources saved it from long and tedious unnecessary litigation, and probably ruin, through the loss of credit and the heavy expenses of the litigation, fees to officials, etc.

CASE OF CENTRAL OF GEORGIA RECEIVERSHIP.

TESTIMONY OF MR. A. R. LAWTON.

(Pages 1599–1636.)

Mr. Lawton stated that he was an attorney by profession and at present held the position of vice president of the Central of Georgia Railway; that his firm, Lawton & Cunningham, has been counsel for the railroad mentioned since in the early eighties. Mr. Lawton then testified with regard to the receivership case in substance as follows: On March 3, 1892, one Rowena M. Clarke, of Charleston, S. C., who owned 50 shares of capital stock of the company, filed a bill against the railway, alleging that the company had made a contract which was ultra vires, and that Judge Speer, without a hearing and without notice, placed this great railroad corporation in the hands of a receiver; that at the time the bill was filed the stock of the corporation was selling at $110 per share and had paid 7 per cent dividends without interruption for a number of years; that the stock was owned by many small holders throughout the State and was a favorite investment for trust funds and that the semiannual dividend of 3½ per cent was paid on the 1st of January, 1892, prior to the filing of the bill mentioned in March, 1892; that the corporation had leased its railroad lines to the Georgia Pacific Railroad Co., a subsidiary of the Richmond Terminal Co., and that he knew nothing of any difficulty until on March 4, 1892, he was served with an order from the United States court, appointing Mr. E. P. Alexander receiver of the company and calling upon them to show cause on March 14 why a permanent receiver should not be appointed; that at the time this notice was served the capital stock of the company was selling at $110 per share and that when the litigation was ended, after years of control by the court, the stock was worth only $4.50 per share; that during the receivership the railroad company became insolvent and was unable to conduct its business, while it was solvent before the commencement of the receivership proceedings; that the bill filed did not allege insolvency and that the stock was so highly considered generally that probably 20 per cent of it was owned by women and trust estates.

In answer to questions Mr. Lawton stated he had never been able to find who was behind the plaintiff in filing the suit against the company, but that the receiver was appointed without any notice of any kind or character, and that it had always been described as the "midnight order," and that it came like a thunderclap out of a clear sky. That the bill was not verified or sworn to by the plaintiff, and that it alleged that the lease to the Richmond Terminal Co. was contrary to public policy and beyond its powers to contract, and that the property was being mismanaged generally. He stated

further that the bill did not contain an allegation of insolvency or allege irreparable injury unless immediate relief was afforded. That the bill was verified by counsel only, and that this attorney could not possibly have known a single fact alleged in the bill, the important allegations being alleged on information and belief. Mr. Lawton read the verification of the bill as follows: "I, Daniel W. Rountree, do swear that the allegations contained in the foregoing bill are true." In answer to further questions Mr. Lawton replied that there was no allegation, and no affidavit of irreparable loss or injury upon which the summary action of the court could be based. That the placing of the company in the hands of the court destroyed its credit, and that it was difficult for it to obtain funds. Mr. Lawton then recited the history of the railroad during the several years it was in the hands of the court, and stated that when the original bill finally came up for a hearing it was dismissed for want of equity by Justice Jackson, and upon appeal being taken to the circuit court of appeals, the judgment dismissing it for want of equity was affirmed. That the Georgia Central Railroad Co. was ruined upon a bill that had no equity in it, in his opinion, and that the judgment of the circuit court and circuit court of appeals affirmed his opinion. He stated further that he did not believe that any receiver would have been appointed if there had been a hearing on the application. He stated that it would be impossible to state in figures the amount of damage done by this action of the judge, but that every security of the corporation went very low and a great many people were forced to sell out. That the expenses of the receivership, counsel fees, court costs, etc., were enormous, the litigation lasting three and a half years.

Mr. Lawton stated that in his opinion the railway company would have remained solvent, and even weathered the panic of 1893 if it had not been taken in custody by the court.

AFFIDAVIT OF HON. T. M. CUNNINGHAM, JR.

On the subject of alleged arbitrary and oppressive conduct of Judge Speer in placing this great railway corporation in the hands of a receiver without notice, the Hon. T. M. Cunningham had made an affidavit, which will be found marked "Exhibit No. 26." This affidavit corroborates the testimony of Mr. A. H. Lawton in every way. Mr. Cunningham states that the properties of the company were placed in the hands of a receiver on an order signed by Judge Speer at chambers March 3, 1892, and that it was commonly supposed that the judge signed the order on the night of March 3; that the company had no notice of the order until March 4, when it was presented by the attorney, Daniel W. Rountree; that the bill was sworn to by Mr. Rountree and by no one else; that it alleged that a lease made by the railway company was ultra vires and null and void; that there was no allegation or suggestion that the company was insolvent, and that on this bill the receiver was appointed ex parte and without notice of any kind; that the company had been operating successfully for many years previously and regular dividends paid upon the stock. Mr. Cunningham further states that the bill in question was subsequently dismissed for want of equity by Justice Jackson, and that the decision of Justice Jackson was

affirmed by the circuit court of appeals. (Clarke et al. *v.* Richmond & W. P. Terminal Co. et al., 62 Fed., p. 328.)

The evidence on this subject shows that Judge Speer, by what is historically known as the "midnight order," placed this great railway corporation in the hands of a receiver without any notice whatever, in an ex parte hearing, on a bill which was not verified by the plaintiff, and which did not allege insolvency or irreparable injury. The evidence further shows that, when this bill was finally passed upon by the court, it was declared to be without equity and dismissed, and this decision affirmed by the circuit court of appeals. The evidence further shows that this great corporation, although in a prosperous condition and paying regular dividends of 7 per cent prior to the receivership, was injured to such an extent that at the end of the litigation its securities, which formerly sold at $110 per share, were valued at only $4.50 per share. It is also shown from the evidence that many private fortunes were ruined in this way, and that, if it had not been for the action of Judge Speer and the resulting loss of credit and court costs and expenses of the receivership, the company would probably have remained solvent, and even successfully passed through the panic of 1893, which followed shortly. The evidence also shows that during the several years during which this railway corporation was in the hands of the court Judge Speer shipped freight over it free of charge, a privilege not enjoyed by any other person, not even by the president and high officials of the railway corporation.

THE HUFF CASE.

TESTIMONY OF HON. THOMAS F. FELDER, ATTORNEY GENERAL.

(Pages 1846–1900.)

Mr. Felder, the present attorney general of Georgia, testified that he had represented Mr. W. A. Huff in this suit, which was a creditor's bill filed against Huff on August 5, 1899; that the complainants, Bidwell and Woodford, held judgments for $3,900 and interest against Mr. Huff, and that Judge Speer appointed a receiver upon the filing of this bill in an ex parte hearing and ordered him to take charge of the property of Mr. Huff; that the court has sold and realized from this property during the progress of the case $103,000 and that there still remains unsold property valued at $15,000; that Bidwell held a $1,500 mortgage against a piece of property which was sold during the litigation for $21,500, and that Woodford held a small mortgage lien against another piece of property valued at $12,000 to $15,000; that Judge Speer in taking charge of all this property appointed Mr. Clem P. Steed temporary receiver, and shortly thereafter left the district and went to his summer home at Mount Airy, Ga.; that this temporary receiver held the property for three and one-half years, and that when the case came up for hearing a permanent receiver was appointed, at which time Mr. Felder was brought into the case; that Mr. J. N. Talley was appointed examiner in the case and testimony taken before him; that at this time all of Mr. Huff's debts of every kind and character amounted to about $34,500, including the $15,000 mortgage held by the Scottish American

Mortgage Co. against a piece of Huff's property which later sold for $71,500; that after the testimony was taken before the examiner the case was argued before Judge Speer and he refused to dismiss the bill; that a part of the property seized by the court belonged to two of Mr. Huff's children and that their rights were ignored and all of it sold; that no claim was made that the property of these children was subject to Mr. Huff's debts, but notwithstanding that the court proceeded to sell it.

That appeal was taken to the circuit court of appeals, which court held that the plaintiffs were liable for all costs up to the time the receivership was made permanent, but affirmed the permanent appointment of the receiver as it was made to appear in the record, that no objection had been made to said appointment; that when the matter was being argued he produced before the circuit court of appeals a letter written to Mr. Huff by his attorney, Alexander Proudfit, in which this attorney denied having consented to the receivership; that the circuit court of appeals allowed him to file the letter, but that it was probably never considered by them, as it was not a part of the record. Mr. Felder then read the letter mentioned, which appears on page 1856 in the record. He then cited the decision of the circuit court of appeals in this case as follows: 151 Fed., 563; 176 Fed., 1022; 195 Fed., 430. He then read from the decision holding that Judge Speer erred in appointing the temporary receiver as follows:

> The case has now reached the final decree on its merits, and we can do nothing as to the appointment of the receiver except to direct that the costs growing out of this receivership shall be taxed as seems right under the circumstances. We, therefore, direct that all the costs of the receivership, of every nature and kind, from the appointment of the receiver without notice on August 5, 1899, until the defendants did "seemingly acquiesce" in the renewal order of appointment of May 31 (1902), be taxed against the complainants who procured the appointment.

Mr. Felder also testified that the complainants in this case also attempted to remove from Huff the support of the city of Macon by proposing to pay the paving assessment which was charged against some of the property; that in spite of this order of the circuit court of appeals that the costs of the temporary receivership be taxed against the complainants, Judge Speer ignored it and taxed them against Huff's property; that when exceptions were made to this Judge Speer ordered the money held up until it could be finally passed upon by the court of appeals, although it had already been plainly stated by the court of appeals that these costs be taxed against the complainants; that when the property was ordered sold under the final decree, Messrs. E. Y. Mallary and John F. Cone, who had been made receivers after the death of Mr. Steed, were appointed commissioners for the sale, and proceeded to sell the property in a way which was not authorized by the decree; that he (Felder) went to see Judge Speer and made a complaint that they were preparing to sell the property in large tracts, contrary to decree, and also to sell the Huff home, which was not necessary, but that the judge ordered the commissioners to proceed; that Mr. Huff had owned the home for many years and had buried a child on the lot, and that this fact was especially called to the attention of the judge, but he declined to protect the homestead; that the property was sold at this time and brought $70,000, and produced a net amount of more than $40,000 in excess

of enough to pay Huff's debts; that he made objection to the approval of the sale, as the debts had already been fixed by a former decree and they did not wish any more property sold than enough to pay his debts. This objection was overruled.

Mr. Felder next testified that Judge Speer allowed out of Mr. Huff's estate to the counsel for the complainants against him, Hall & Wimberly, a fee of $10,000, to be paid out of the money in court realized from the sale mentioned; that appeal was taken to the circuit court of appeals, which reversed Judge Speer and stated he had no right to sell any more of Huff's estate than enough to pay his debts (195 Fed., 430); that the next step was the fixing of commissioners' and receivers' fees, etc., and that the master, Mr. Talley, had already been paid $1,500 for his services in this case, but that Judge Speer brought Judge Andrew J. Cobb (now acting as his attorney in this investigation) into the case, and appointed him master to pass upon fees, and allowed him $750 for that service out of Mr. Huff's property; that Mr. Cobb made two trips to Macon and stayed a couple of days, during which time testimony was taken, and was paid the fee mentioned; that the judge made the order allowing this fee without giving the defense any opportunity to object. Mr. Felder testified also that Mr. Talley, who was paid about $1,500 as master, was at the time partner of Mr. Heyward, son-in-law of Judge Speer, also that he (Speer) ordered $823.70 paid to Mr. Cork, who was appointed examiner to take testimony; that this money was paid out of Huff's fund, notwithstanding the issue in which Mr. Cork was engaged was between Bidwell and the city of Macon; also that Mr. Cecil Morgan, brother-in-law of Judge Speer, was paid $5 as stenographer and Mr. Cameron, Judge Speer's stenographer, was paid $24 for stenographic services; that Mrs. Clem P. Steed, the widow of the first receiver appointed by Judge Speer, was paid $1,600, and Mallary and Cone, as commissioners, were paid $3,800, and C. Morecock, a former stenographer of Judge Speer, was paid $308, all out of Huff's estate. Mr. Felder mentioned a number of other fees paid in a similar manner.

On the subject of arbitrary action Mr. Felder testified further that after the sale of the property known as the Kimball House, in which Mr. Huff's children had a separate undivided two-sevenths interest, which sale was made upon the express understanding that these children should receive the money due them promptly; he made repeated applications to the court for the money due these children, amounting to $6,143, but that these applications were denied; that this money has been held in court and charges and expenses taxed against it unjustly; that the interest of the children in other parts of Mr. Huff's property were likewise sacrificed and the property sold over their protest; that when the money was finally tendered to these children it was so depleted that they declined to accept it and appealed to the circuit court of appeals.

Mr. Felder testified in reference to statements made that the property of Huff had greatly enhanced in value, and also that it had brought these large amounts of money due to the good management of the receivers; that there had been no management and there was nothing to manage; that the property was allowed to go to wreck and ruin, and that they had been unable to get back even the property which had not been sold by the court on account of the excess already

realized. He also stated in reference to the claims made that Huff had been allowed a living out of the money brought into court, that the only allowance made was $75 per month at first, and then $100 per month, until the time appeal was taken in the case, and that nothing had been received by Huff since 1906, and his money still remains in court.

Mr. Felder testified that all of the money received from the sale of Huff's property, amounting to approximately $100,000, had been placed in the Commercial National Bank of Macon, of which one of the receivers was president, another of the receivers a director, and Judge Speer's brother-in-law, Mr. Morgan, vice president; that this money had been allowed to remain in this bank without drawing any interest for several years; that during the trial of the case he objected to paying fees and expenses and called attention to the fact that the fund in the bank was producing no income and to the further fact that the receiver asking for the large fee in question was president of the bank which was profiting by this condition, and the other receiver a director in the bank; that he put on the stand during these proceedings certain bankers of Macon to prove that it was the custom of Macon banks to allow 3 per cent interest on deposits subject to check and 4 per cent on time deposits; that the master's attention was called to this fact and that the matter went to Judge Speer, who sustained the master; that Mr. Huff addressed a letter to Judge Speer in July, 1912, advising him that the money of the bank was drawing no interest, and protesting against the parties profiting from his fund in that manner; that appeal was taken from the decision of Judge Speer that the debts of Huff draw interest covering all the period the estate was in court, although the fund in the court was not drawing any interest, and that the appeal is now pending.

Mr. Felder also stated that the questions, first of the judge ignoring the decree of the court of appeals as to costs, second, the allowance of costs, and third, the rights of the children of Mr. Huff are now pending on appeal.

Mr. Felder said that the case had been grossly mismanaged; that the property amounting to $103,000.48 had been sold, and rent amounting to $8,516.09 collected, making a total of $111,564.09 brought into court in cash; and that there is still unsold property known as the Armory property, valued at from $12,000 to $15,000; that this money was all brought into court on the original claims of $3,900 and interest, and that the other debts of Huff were brought into the case later; that Judge Speer did wrong when he appointed a receiver without notice in the case, as the property was all real estate and could not get away, and that Judge Speer must have been informed of this, as he was a close neighbor of Mr. Huff and was acquainted with him and his property condition. He also stated that when the case is finally settled Huff should receive back a large sum of money in addition to the Armory property, which has not been sold; also that the fees of Mr. Talley, a partner of the judge's son-in-law, were allowed without notice to him (Felder) and without any opportunity for protest.

TESTIMONY OF MR. W. A. HUFF.

(Pages 621–704.)

Upon being sworn Mr. Huff gave his name, age, and residence, and stated that he had known Judge Speer for 30 or 35 years. He then stated that on August 5, 1899, Judge Speer put all his property and that of his children into the hands of a receiver without any notice, Mr. Clem P. Steed being made temporary receiver. That the matter ran along until the spring or summer of 1902, at which time this temporary receiver attempted to sell a part of his estate to the State of Georgia for a site for the Academy for the Blind. That he objected to the price named by the receiver, and that it was raised from $500 to $600 per acre, and the property finally sold. That when the time came for the appointment of a receiver permanently Mr. Steed was made permanent receiver. That after the appointment of the permanent receiver the court proceeded to take testimony with regard to his debts, etc., and that after two or three years, during which time many officers and attorneys were employed, Judge Speer rendered a decree for the sale of his property, from which his attorney appealed. That at this time he changed his attorney from Mr. Proudfit to Hon. T. S. Felder. That the appellate court modified the decree of Judge Speer and placed all the costs of the litigation upon the plaintiffs up to the time the receivership was made permanent, the court stating that the defendant having "seemingly" acquiesced in the permanent receivership the subsequent costs would be charged to him. That he had not consented to the permanent receivership, but that his attorney had failed to make any positive objection and the court of appeals had taken this action for consent.

That in July, 1909, the receivers came to him and requested his consent to the sale of the Kimball House property. That he requested the receivers to first advertise the property. That this was refused. That after considerable controversy over the matter he consented to sell all the property, provided there should be a prompt distribution of the proceeds, the property being finally sold for $21,500. That this sale took place July 15, 1909, and that in the fall of the same year a proposition was made to him, by one of the commissioners appointed by the court, for the sale of the Vineville property for $50,000, which proposition he refused, and that later the same parties made a proposition to buy the Vineville property for $52,500, which was also refused. That as time went on a number of syndicates were formed for the purpose of buying his property, one of which included Mr. Olin J. Wimberly, the attorney who had originally filed the suit against him. That the property was finally advertised for sale, and when sold brought $70,500, this money being deposited in the Commercial National Bank at Macon, where the $21,500 realized from the sale of the Kimball House had already been placed. That this money remained in the bank for a number of years, and that large fees were paid out of it to the receivers, masters, examiners, etc., $4,000 being paid to the commissioners and $750 to the master, the master being Judge Andrew J. Cobb. That $1,000 or $1,500 was paid to Mr. Talley and Mr. Cork. That with the exception of the amounts mentioned the whole of the money deposited, that is, $94,000, remained in the

bank until May, 1913, at which time a part of it was distributed. That the bank held this money without interest being paid therefor. Mr. Huff related the incident relative to the publication of certain letters written by him regarding Judge Speer's conduct, which resulted in his arrest and the proceedings known as the Huff contempt case.

In answer to questions from the chairman, Mr. Huff stated that the original suits upon which this property was placed in the hands of the court were filed on judgments, one for $1,500 and another for $2,400. Mr. Huff then gave the facts with regard to the value of his property at the time it was seized by the court, stating that the Kimball House was taxed for $20,000, and later sold for $21,500. That he had been offered $65,000 for his Vineville property before the filing of the suit against him, and that the Armory property was assessed by the city at $10,500, the total value of his property at that time being about $125,000. He stated further that his total indebtedness was less than $34,000. Mr. Huff further testified that Mr. Clem P. Steed, the party named as receiver of his estate, was a lecturer at Mercer University with Judge Speer, and that Mr. Wimberly, the attorney who filed the original suit against him, was also a lecturer at the university, and a close friend of Judge Speer. That when Mr. Steed died Judge Speer appointed in his place Messrs. Mallary & Cone, both of whom were officers in the bank where the money realized from his estate was deposited. That Judge Speer appointed his stenographer, Mr. Talley, master in the case. Mr. Huff then testified that the Mr. Mallary mentioned above was president of the Commercial National Bank, and that Mr. Cone was a director and stockholder.

He also testified that Mr. Cecil Morgan, a brother-in-law of Judge Speer, was vice president of the bank mentioned and also deputy clerk of the United States court. In answer to questions, Mr. Huff testified that the money realized from his estate, amounting to nearly $100,000, had remained in the bank mentioned for a number of years without interest, while his debts had been allowed to draw interest all during the years while the litigation was pending; that Judge Speer allowed the attorney for the plaintiffs in the case a fee of $10,000 out of his estate, and that his decision was appealed from and the circuit court of appeals reversed it; that this $10,000 fee was allowed by Judge Speer to the attorneys who presented claims amounting to only $3,900, but that the court of appeals set him right. He testified, further, that Judge Cobb, who is mentioned as having received $750 as master to pass upon the commissioners' fees, resides at Athens, a city about 70 or 80 miles distant from Macon, the only services which he rendered being three trips to Macon for the hearing of the argument in favor of the commissioners' fees; that the commissioners asked for $12,000 as their fee and that Judge Cobb allowed them $4,000. He stated, further, that although sufficient property had been sold to pay his debts, with interest and accumulated court costs, he still had unsold property worth $15,000, and that he claimed that at the time the receiver was appointed his estate was entirely solvent; that if the estate had been properly handled his home could have been saved to his children.

Upon being recalled Mr. Huff produced copies of letters (pp. 1340–1383) which he had written to Judge Speer which were handed

to the clerk and marked for identification. Mr. Huff then testified that in the suit against him, mentioned in his testimony heretofore, he had not consented to the receivership and that his attorney had not consented to it. He then produced a letter from his attorney, Mr. Alexander Proudfit, in which the statement is made that he positively did not consent to the receivership. He testified further that at the time his suit was filed against him and the receiver appointed, he went to the attorney for the plaintiff, Olin J. Wimberly, and asked upon what terms the suit could be withdrawn, to which Mr. Wimberly replied that it could be withdrawn upon the payment of a substantial amount on the claims represented by him, and upon further payment to him (Wimberly) of a fee of $2,000 and an additional fee of $2,000 to the receiver; that this proposition was refused, and that later the attorney, Mr. Wimberly, made another proposition that Mr. Huff pay him a fee of $2,000 and the receiver $1,000, which was also refused. That after his property was placed in the hands of a receiver without notice, he was allowed out of the rents collected by the receiver $18 per week until the time he appealed in December, 1903, and that then this allowance was cut off. Mr. Huff also testified that the money realized from his estate, i. e., $21,500 from the Kimball House, $70,500 from his Vineville property, and other items of rent, etc., collected, totaling $94,000, remained in the Commercial National Bank without interest for three years and two months, while the bank was paying 4 per cent interest on its ordinary deposits; that this bank was known as the "family bank" on account of Judge Speer's brother-in-law being vice president and stockholder. Mr. Huff testified that when he appealed from the action of Judge Speer, the circuit court of appeals, after a hearing on argument, placed all the costs of the cases, up to the time the receivership was made permanent, upon the plaintiffs, and proceeded with the statement that as the defendant "seemingly acquiescing" in the receivership being made permanent, the subsequent costs would be charged against him. He states this action of the court shows that the court of appeals considered the appointment of the receiver improper.

Mr. Huff further complained that the manner in which his property was sold by the court resulted in the sacrifice of much of its value; that 295 acres of suburban land was sold in 3 hours and 45 minutes in large tracts, with no attempt to subdivide or make the most of it, one tract of 90 acres being sold in a lump and others of 35, 45, 50, and 60 acres. Mr. Huff stated further that Judge Cobb was brought into the case unnecessarily and paid a fee of $750 as master to pass upon certain other fees.

Mr. Huff testified further that Judge Speer had ordered a road to be cut through a part of his property in the following manner: He (the judge) was riding horseback and passed the property in question, and when he reached a cotton mill run by Mr. P. Willingham was stopped by Mr. Willingham and asked if a road could be cut through the Huff land in order to make a more direct entrance to the mill; that Mr. Wimbush, the county superintendent of public works, was working with a gang of men not far distant, and that Judge Speer sent for him and instructed him to cut a 30-foot road through the lot in question, to which Mr. Wimbush objected, on account of having no order from the road commissioners; that Judge Speer replied, "Mr.

Wimbush, you will cut that road," and upon being asked about the objections of Mr. Huff said, "You let me know if Huff says anything about it; I have been caring for him and his family and children for several years." The road was then cut without further authority.

TESTIMONY OF MR. CECIL MORGAN.

(Pages 1426–1428.)

In answer to questions of the chairman, Mr. Morgan stated he was a brother-in-law of Judge Speer, and further that he held the position of vice president of the Commercial National Bank; that the president is E. Y. Mallary. Mr. Morgan was then asked by the chairman to identify the advertisement of his bank appearing in the Macon telephone directory in which they offer to pay 4 per cent interest on deposits.

On cross-examination, Mr. Morgan testified the bank in question was the court depositary and that he had never known any funds in the registry of the court to bear interest. Also that he did not know of any effort by the parties in the Huff case to have the money involved placed at interest.

TESTIMONY OF HON. ANDREW J. COBB.

(Pages 1589–1594.)

In answer to questions from the chairman, Judge Cobb said that he had represented Judge Speer in a suit over his mother's will filed in Clarke County, Ga., and that it took about three days to try it; that he did not charge Judge Speer any fee for representing him in this case.

The evidence of Mr. W. A. Huff and of Hon. Thomas S. Felder, taken together with the records in this case, shows that Judge Speer appointed a receiver without notice for property of Mr. Huff worth about $100,000 on a creditor's bill representing claims of about $4,000; that he allowed the money arising from the sale of this property amounting in all to nearly $100,000 to remain without interest in the bank of which his brother-in-law was vice president for a number of years, although the matter was brought to his attention; that he allowed property belonging to the children of Mr. Huff, which was not subject to his debts, to be sold by the receiver; that he allowed the homestead of Mr. Huff to be sold by the receiver, although property equally valuable has remained unsold; that he allowed the attorneys opposing Mr. Huff a fee of $10,000 out of his estate; that the Judge's son-in-law's firm was paid $1,500 out of this estate for acting as master of the court, and that Judge Andrew J. Cobb, who had previously represented the Judge in private litigation gratuitously, was appointed a master in this case and paid a fee of $750 by Judge Speer.

In his brief Judge Speer states that no application to have the money realized from this estate placed at interest was ever made to him, but he admits that he received a letter from Mr. Huff in which the matter was called to his attention. It is noted that when appeal was taken from the decree of Judge Speer for a sale of Mr. Huff's property the circuit court of appeals in hearing the matter taxed all

of the costs of the suit up to the time when the receivership was made permanent against the plaintiff, and stated that as the defendant had seemingly consented to the permanent appointment of the receiver they could not do otherwise than assess the subsequent costs against him. It is also noted that in passing upon the appeal taken by Mr. Huff from the allowance of $10,000 out of his estate to the attorneys opposing him, the circuit court of appeals, in reversing Judge Speer, criticized his conduct, and stated that no more of Mr. Huff's property should have been sold than enough to pay his debts.

The argument that this large amount of money remained in what is known as the "family bank" for several years without interest because no application was made to have it put at interest is refuted by the testimony of both Mr. Huff and Mr. Felder, but it is submitted that a wise and just chancellor would not wait for such an application, and would see that this money under his charge was producing some income, and this is especially so when it is remembered that to allow it to remain without interest (in a bank in which his family was interested) would naturally cause criticism. The arrangement for having funds of this character taken from the registry of the court and placed at interest is very simple, and would have been done in this case had Judge Speer intimated that such course was desirable.

ALLEGED OFFERS TO ACCEPT BRIBES.

TESTIMONY OF JOHN M. BARNES.

(Pages 909–911.)

Mr. Barnes testified that in the year 1901 he went to Judge Speer's chambers to thank him for a fee as custodian in a bankruptcy case, and in thanking him stated that he feared the judge had been too liberal; to which the judge replied that people do not appreciate a man's working for them for nothing and that he (Barnes) had better make the most out of these things; that he then thanked the judge again, but before he could leave the room, the judge detained him and slowly said: "You thank me very beautifully for these things sometimes, but what is there in it for me?" Mr. Barnes states that he had been expecting this for a year or more and was greatly confused, but threw up his hands and made an effort to appear not to understand, and said, "Oh, millions, Judge," and hastily got out of the door; that he went at once to the judge's stenographer (Mr. Talley), who was also his adviser and mouthpiece, and told him that favors as large as custodianships tendered to disturb the proper relations between the judge and marshal and that in the future he would only be willing to accept such appointment where the fees were nominal; that thereafter the judge was cool for a long time and gave him no occasion to object to the liberality of the fees; that prior to this time, in August, 1900, the judge had told him that he had instructed all referees to appoint him (Barnes) custodian in all bankruptcy cases during the judge's absence from the district, quoting the exact language of the order; that the judge hinted that he would want some of his hangers-on appointed as subcustodians, or to some of the under places. That he made a clumsy effort at

diplomacy and declined the offer on the ground that he feared the department might set up a claim to the fees, and that it would ruin him to have to repay such fees.

Mr. Barnes stated further that on one occasion he wished to give the judge a Christmas present, but feared that the provisions of the Revised Statutes prohibited such action, and that he asked Mr. Talley, who was used by all the court officials to communicate with the judge, to ascertain if the statute applied, and that the next day Mr. Talley came back and told him the statute did not interfere, as he was not an inferior officer in the sense that was meant in the law, but was merely a smaller officer; that thereafter he felt free to send such presents to the judge and continued to do so.

Judge Speer states in explanation of the charge made by Mr. Barnes that he merely recited to Mr. Barnes a quotation from well-known classical literature, and that Mr. Barnes construed this into an offer on his part to accept a bribe.

ALLEGED VIOLATION OF THE LAWS IN DRAWING JURIES.

TESTIMONY OF HON. THOMAS FELDER.

(Pages 1814–1823.)

Mr. Felder stated that he was an attorney by profession and had been practicing in the southern district of Georgia for 18 or 20 years, and at present holds the position of Attorney General of the State of Georgia. Upon being asked to explain the law with reference to the drawing of juries, Mr. Felder stated that the law requires the district judge to draw the juries from jury boxes which have previously been prepared by the jury commissioner; that this drawing must be done publicly and in the presence of the marshal and clerk of the court; that special juries may be drawn under certain conditions, but that they must in all cases be drawn from the jury box; that the Federal law adopts the State law in reference to special juries and distinctly says so in the Federal Statutes; that when a panel is depleted by any reason the judge can order it filled from the bystanders, and that is the only instance where a jury can be selected without drawing their names from the box.

Mr. Felder testified that in the peonage case, entitled United States *v.* Laidler Branen and John H. Branen, he was employed to defend these parties, and when he went to look up the list of jurors he found that every man on the list resided within the city of Macon, and that as it was impossible for all the names on a jury drawn from the box according to law to be those of men residing in the city of Macon, he became suspicious and inquired of the clerk of the court, Mr. Cecil Morgan, as to how the jury was selected, and Mr. Morgan told him that the jury was not drawn from the box, but was selected from a list by the marshal, Mr. George F. White. He stated also that he was quite certain this statement was also made to him by Mr. L. M. Erwin, deputy clerk of the court. He then asked Mr. Morgan if any order had been passed by Judge Speer with reference to the jury, and Mr. Morgan replied that no order had been made. Mr. Felder returned to the clerk's office later in the case and found that an order had been entered on the minutes, nunc pro tunc. Mr. Felder stated

he then prepared a challenge to this panel of jurors, and that every statement made in it was true. Upon being asked to read the challenge, Mr. Felder read it into the record. This challenge is found beginning at page 1818 in the record in this case and is Exhibit 14. It states in substance that the panel of jurors put upon these defendants was not properly or legally drawn from any jury box according to law or in any legal manner, but on the contrary, each and all of these men, all residing in the city of Macon, Ga., were selected by the marshal, George F. White, without regard to ballot or lot or the drawing of them from any jury box, and summoned to serve as jurors; that these jurors were not summoned and brought into court, as required by law or by rule 81 of the circuit and district courts, the clerk not having made and delivered to the marshal a venire directing him to summon these jurors to serve at this or any other term of court, no venire whatever having been issued by the clerk or any other officer, but on the contrary the marshal used his own discretion in selecting the jurors without regard to any venire; all of which is in violation of the acts of Congress and the rulings of the said court. The challenge states further that the jurors put upon these defendants make up and compose the only panel of jurors summoned for that term of court, there having been no other jurors drawn or selected for said term of court, and that these jurors mentioned were not selected and empaneled to take the place of any jurors theretofore drawn, or to complete any panel of jurors drawn, but that the jurors put upon these defendants are acting as a regularly empaneled trial jury for the October term of court, all of which is contrary to law; that these jurors were not taken impartially from different parts of the district, but on the contrary each and all of said jurors are residents of the city of Macon, Ga., and were arbitrarily selected by the marshal without any order of the court directing him in that regard.

Mr. Felder stated that after this challenge was prepared he submitted the question to his clients as to raising the point of the illegal selection of jurors, and explained to them that if Judge Speer overruled the challenge it would be necessary to appeal to the circuit court of appeals, and that unless they had sufficient funds to carry the case up their interests might be prejudiced with the court and jury by the raising of the point; that the defendants stated they did not have sufficient funds to appeal the case, and that therefore the challenge was never filed. Mr. Felder testified further that on the list of jurors selected there was more than one man who had received favors from Judge Speer by virtue of receiverships, etc. He also stated (p. 1953) with regard to the illegal jury mentioned in his testimony, that Judge Speer in the trial of his cases pays no attention to the terms of court, and that the jury in question was the only jury that had been drawn for the regular term of court then in session.

TESTIMONY OF MR. W. C. SNODGRASS.

(Pages 705–706.)

Mr. Snodgrass stated that he was an attorney and had been practicing in the southern district of Georgia 15 or 20 years. In answer to questions as to the manner of drawing juries, Mr. Snodgrass stated that "in the State court a jury commissioner makes up what is

known as a grand and petty jury list. These names are placed in boxes and drawn by the judge in the presence of the sheriff and clerk. Now as to Federal juries, I have never had occasion to look into it carefully, but my impression is that it follows the State court practice."

TESTIMONY OF JOHN M. BARNES.

(Pages 915–916.)

On this subject Mr. Barnes testified that in January, 1904, after repeated efforts on the part of the judge to get juries without colored men on them he (Barnes) left the city for a day, but before leaving cautioned the chief deputy that the judge would most likely avail himself of Mr. Barnes's absence to have a tales jury summoned; that on his return, as he had anticipated, he found the judge had drawn the name of one grand juryman from the box and ordered the deputy to summon 29 tales jurors at once; that the deputy had partially obeyed his caution and summoned only 24 men; that he (Barnes) summoned the remaining 6 talesmen, three of whom were colored; that in making a return of the venire he placed these colored men on the list as Nos. 7, 10, and 18; that he handed the venire to the deputy clerk of the court, Mr. Morgan, Judge Speer's brother-in-law, who gave it to Mr. Akerman, the assistant district attorney, who disappeared with it in the direction of Judge Speer's office; that Mr. Akerman's clerk rewrote the venire and put the colored men as Nos. 28 and 29 upon the list so that they were shut out from service on the grand jury. That on another occasion when a colored juror had been regularly drawn, the judge facetiously remarked that the deputy would find it too far out of the way to serve that man.

Mr. Barnes stated (pp. 918–922) that Judge Speer packed the grand jury in the Greene and Gaynor case in the fall of 1899; that the judge wanted to get as ignorant a jury as possible, and to that end excluded all names from the counties of Chatham and Glynn, these two counties embracing the cities of Savannah and Brunswick. That when the grand jury was to be drawn in this case the judge called him (Barnes) and gave him a bunch of 50 names from the box, asking him to look them over and see if he knew any of those men; that the names were all from the southwestern division of the district and that he knew hardly any of them; that during all of the drawing Judge Speer and Mr. Talley were in frequent low conversation; that finally when the name of one McKee or McGee, from Valdosta, was reached, the judge and Mr. Talley had a long low conversation, and when the grand jury was empaneled at Savannah this man was appointed foreman by the judge; that one of the men drawn in this manner (named Bennett) had been arrested by the deputy marshal for some offense against the United States and was out on bond, and another was a fugitive from justice, but both were served with subpoenas and became grand jurors in this case.

Mr. Barnes testified further that about 10 per cent of the names in the jury box are those of colored men, a letter "C" enclosed in brackets being written after the names of such men; that when the judge gets his jury by drawing the names out of the box he requests the other officials to keep at a distance, ordering off H. H. King, the clerk, and himself (Barnes), saying he didn't need strict surveillance in the mat-

ter; that he frequently picks up two or more slips as if by mistake and then with a glance and dexterous movement of the fingers drops all but one.

In answer to a question Mr. Barnes again described the method used by Judge Speer in selecting the grand jury in the Greene and Gaynor case (pp. 932–947), stating, "He would ask me to look over them [the names] and see what I could tell about them. There were very few that I knew and I called out the names; and he would reject them or accept them, as the case might be. * * * And when the judge would accept one he would pass it to Mr. L. M. Erwin, deputy clerk, to enter on the list." In answer to questions as to whether the judge accepted or rejected names after consultation with Mr. Barnes, with Mr. Talley, or Mr. Tucker, Mr. Barnes testified that the names were accepted or rejected after being discussed in the manner described. Mr. Barnes testified that he was reasonably sure at least 100 names were taken from the box and examined in selecting 30 names for the grand jury, and in replying to a further question as to whether the names were selected by lot or indiscriminately, he states, "I tried to select men from every class and mix them in, so there could be no possible chance of anything like a picked or packed jury. I took the rich and the poor, high and the low, the banker and the farmer, everything, so as to get a representative jury.

TESTIMONY OF ALEXANDER AKERMAN.

(Pages 1089–1091.)

Mr. Akerman stated that in the fall of 1912 Judge Speer had drawn a grand jury while outside of the judicial district; that he had received a written notice from the judge that he was unable to come to the district for the purpose of drawing a grand jury, and requesting that one of the assistant district attorneys be sent to Mount Airy, Ga., with the clerk, the marshal, and the jury boxes, for the purpose of drawing a jury; that he doubted the legality of such proceedings, and wired the department for authority to send one of his assistants as requested by the judge; that the jury was actually drawn by the judge at Mount Airy, Ga., and that he still doubts the legality of such a jury, as the law states that it shall be publicly drawn, which means in such a manner that the public affected by the proceedings can have access to them; that Mount Airy, Ga., is between three and four hundred miles distant from the city of Savannah, where the jury was to be used.

This correspondence is in evidence as Exhibit 14–B.

TESTIMONY OF MR. A. A. LAWRENCE.

(Pages 1430–1445.)

Mr. Lawrence stated that he was an attorney, practicing in the Federal court at Savannah, Ga., and was a partner of Mr. W. W. Osborne; that he was acquainted with Judge Speer and had known

him since his college days. Upon being asked as to Judge Speer's methods in drawing juries, he stated that he had never known the judge to select a jury according to law; that it was a very remarkable thing for the judge to select a jury in open court; that in the Greene and Gaynor case, in which he was employed as counsel for the defendants, he learned that something mysterious was being done in regard to the jury box; that they were fixing up a special box for the case, and upon proceeding to inquire was told by the clerk of the court that no new box had been prepared— but some six weeks afterwards he happened to be going through the files of the case and found there an order which provided for a special jury box by which the defendants should be tried; that the order had been kept from the defendants and was not in the papers at the time the grand jury was drawn. Mr. Lawrence then produced a letter written to Mr. T. F. Johnson, clerk of the court, inclosing an order for the preparation of a special jury box and ordering that it be entered upon the minutes of the court the first day of the term. Mr. Lawrence states this box was made up of men living in five counties in the most remote part of the division, the closest town in the district being 150 miles from Savannah, the place at which the jury was to sit; that the trial jury was also taken from the same box; that when he charged Judge Speer with having ordered the preparation of the jury box in the manner described during the trial of the case he was fined $100 for contempt of court; that Judge Speer never lets anybody have an opportunity to study jury lists and does not draw a jury in advance; that he did not know who the jurymen were to be in the trial of the Greene and Gaynor case until the day before the trial.

The statement of Mr. Lawrence is Exhibit 14–C.

Mr. Lawrence testified (pp. 1445–1449) that he was of counsel in the case of United States *v.* Crawley & McClellan, and that at 5 o'clock in the afternoon of the day before the trial he went to the clerk's office and obtained a list of the jurymen who had been empaneled in order to be able to strike from it, but that to his surprise on going into court the next morning he found that there was an entirely new panel of jurors gotten together since the previous afternoon; that he never understood exactly how they did it, but that there was no doubt that it was a picked jury; that all these men were from Savannah and were served before breakfast on the morning of the trial; that they did not get these names out of the box unless they went and picked them out; that the regular panel of jurors entered upon the records had not been discharged and were present in court. He also stated that there was no provision of law for the drawing of jurors in this way and that they couldn't be called tales jurors.

He stated also (pp. 1466–1469) that Judge Speer did not draw juries in a public way and that he could not tell just how they were obtained, but that he does not draw them out of the box. He stated that he had never in all his practice known Judge Speer to draw a jury out of the box in open court, except in the Greene and Gaynor case, in which a special request was made. He stated further that he had a vague recollection of having seen one other jury drawn from the box.

TESTIMONY OF W. W. OSBORNE.

(Pages 2103–2107.)

Mr. Osborne stated that the jury put upon the defendants in the case of United States *v.* Crawley & McClellan was one of the juries fixed up overnight, all of the parties being residents of the city of Savannah; that these juries were prepared in this way by Judge Speer for the purpose of taking away from the defendants the right to use peremptory strikes, as it is impossible for the defendants' attorney to study the jury intelligently when it is put upon them overnight; that, although he has practiced in this court for 20 years, he has never seen Judge Speer draw but one jury from the box, which was in the Greene and Gaynor case, and was done after a demand from the attorneys for the defense that they be present when the jury was to be drawn; that in this case the judge ordered a special jury box prepared from the names of parties residing in six counties situated 300 miles from Savannah, where the trial was to be held; that the making of this special box was secretly kept from the defense for a couple of months.

AFFIDAVIT OF MR. T. F. JOHNSON.

Mr. Johnson was clerk of the circuit and district courts for the southern district of Georgia for seven and a half years, and he has furnished an affidavit with regard to the manner in which Judge Speer selected juries, and also with regard to his neglect of court business, etc., which is marked "Exhibit 14–D."

The substance of Mr. Johnson's affidavit on the question of drawing juries is as follows:

> Sometimes Judge Speer drew all the jurors out of the box. Often he would draw a few names out of the box and then direct the marshal to select the balance of the jurors from a list of names kept in the clerk's office. This list in the clerk's office contained the names which were in the jury boxes. Sometimes the judge would draw two or three juries during a term of court. He would first draw a full panel, and then if he had an important case to try, just before the case would be tried he would draw an entirely new panel. He would not draw a jury where an important case was to be tried until just a short time before the case was to be tried, and embarrass the marshal by having him to hurry up to get his subpœnas served for the jury to get in on time. Very often the jury boxes would be sent to Judge Speer at Macon to draw juries in the other divisions. I am informed that the last jury for the eastern division was drawn at Mount Airy, the box having been sent there for that purpose.

Mr. Johnson also testified that Judge Speer violated the law in appointing Mr. A. S. Anderson, a Republican, as jury commissioner while he (Johnson) was also a Republican, the law requiring that the commissioners be of opposite political parties; and that he called this matter to the attention of Judge Speer, but that notwithstanding this fact the judge continued to use the jury boxes prepared by these two Republicans for one or two subsequent terms without revision.

TESTIMONY OF JUDGE SAMUEL B. ADAMS.

(Pages 2473–2489.)

Mr. Adams testified that Judge Speer passed an order for the preparation of jury boxes in connection with the case of United States *v.* Merchants & Miners Transportation Co., which was contrary to the

law and which provided that the names put into the box be prepared according to a certain specified number from each county, not in accordance with the population or wealth of the counties. That he, representing the defendant, filed a plea in abatement on the ground that the indictment found by a jury obtained in this way was unlawful, and being overruled by Judge Speer he appealed to the supreme court (circuit court of appeals), and that the court held that the manner of preparing the jury boxes mentioned was strictly unwarranted by law; but they did not reverse Judge Speer on the theory that no injury had been shown to the defendants. (199 Fed., p. 902.)

In connection with the testimony given by Judge Samuel B. Adams, relative to the alleged illegal action of Judge Speer in ordering the jury commissioners to prepare jury boxes by placing the names of a certain number of men therein from each of the several counties, it is noted that after the circuit court of appeals had stated in the case of U. S. *v.* M. & M. T. Co. (199 Fed., p. 902):

> The order of the trial judge instructing the jury commissioners as to the revision of the jury box and directing the placing therein of a certain number of names from the different counties comprising the eastern division of the southern district of Georgia, though *strictly unwarranted by law*, was not so irregular or so erroneous that, in the absence of proof of injury, prejudice can be predicated thereon.

the judge continued to make orders for the preparation of jury boxes in the manner which the court of appeals had stated was *strictly unwarranted by law.* Exhibit 14–E is a certified copy of an order made by Judge Speer March 17, 1913, ordering the jury commissioners to make up boxes in the manner mentioned. This order was made some months subsequent to the decision of the court of appeals mentioned.

The evidence on this subject shows that Judge Speer has made a practice of obtaining juries in an illegal manner, and he does not contradict the testimony of Hon. Thos. S. Felder to the effect that in the case of United States *v.* Branen Judge Speer ordered the marshal to draw a picked jury from the list of jurors when no legally impaneled jury had theretofore been drawn.

It is noted the judge endeavors to show in justification of his action that only good juries have been selected by him and that no harm has been done. He states also that in the Branen case he was under the impression that a regular jury for the term had been impaneled. If he was under such an impression, it is difficult to understand why he thought it necessary to order the marshal to summon a new jury of picked men, all from the city of Macon, some of whom had received favors from him. The facts show that no venire whatever had been drawn or summoned and that the picked jury mentioned were not talesmen, but were the only jurymen summoned for that term of court.

ALLEGED UNLAWFUL AND OPPRESSIVE CONDUCT IN DEFYING MANDATES OF SUPREME COURT AND CIRCUIT COURT OF APPEALS.

THE JAMISON CASE.

TESTIMONY OF MR. CUSTIS NOTTINGHAM.

(Pages 7–49.)

Mr. Nottingham testified he had lived in Macon since he was 12 years of age, and held the position of recorder of the city court from December, 1904, until about the first part of 1908. On March 13, 1904, Jamison was brought before him charged with being drunk and disorderly, also with the offense of being violently abusive and disorderly after his arrest; that Jamison cursed the officers in the most obscene and profane manner, and persistently demanded that the officers ring up Judge Speer; he fined Jamison, and in default of the payment of the fine Jamison was delivered to the superintendent of public works for service in the chain gang. That he was later released from that custody on a writ of habeas corpus issued by the United States court, upon the order of Judge Speer, Mr. Alexander Akerman appearing as his counsel in that hearing.

Upon the case being taken on appeal to the Supreme Court of the United States by the city of Macon, the decision of Judge Speer was reversed. Mr. Minter Wimberly, the city attorney, made application to Judge Speer to have the mandate of the Supreme Court made the judgment of the lower court, but the motion of Mr. Wimberly was declined and not acted upon. Mr. Wimberly then directed the chief of police of the city, Mr. Connor, to take Jamison into custody, and return him to Mr. Wimbush, that his sentence might be served. As a result of this action, attachments for contempt of court were issued by Judge Speer for Mr. Wimbush, Mr. Connor, and Mr. Wimberly, and Jamison was also taken from the custody of the city and released.

Pending the determination of the Jamison case, several writs of habeas corpus were sued out on behalf of other parties, who were released in a like manner. So far as the witness was informed no effect had ever been given to the mandate of the Supreme Court, and he had no knowledge whatever of the order which now appears in the United States District Court at Macon, dated June 8, 1906. He had about this time been involved in a newspaper controversy with Judge Speer, and is certain he would have been advised if any publicity had been given to the order of the court finally made in the case. The original writ of habeas corpus sued out was made returnable at Savannah, Ga., about 175 miles distant from Macon, and, as he understands the statutes, it is imperative that writs of habeas corpus shall be made returnable within a mileage distance, as he recalled it, within 50 miles of the place of detention. Mr. Nottingham stated further that after an extended hearing on the attachments for contempt issued against the city authorities, Judge Speer reserved his decision for several years, and that he was informed later that the contempt cases were dismissed. The act under which Jamison was sentenced to the Bibb County chain gang was later declared void by the supreme court of the State of Georgia, and a technical change in

the city charter, by which the city established its own chain gang, the sentence reading, under the amended act, "to the public works of the city," instead of "to the public works of the county."

CROSS-EXAMINATION.

Mr. Nottingham stated he was a lawyer by profession and had practiced about 10 years at the time he rendered the sentence in the Jamison case. Aggregate money penalty imposed by him in the case was approximately $60, and that the time to be served in default of payment aggregated seven months, there being two separate charges and convictions. The persons with whom Jamison was confined were felons of all classes under the laws of Georgia. After receipt of the mandate of the supreme court in the Jamison case, a case somewhat similar to the Jamison case—i. e., the Pearson case—was taken to the Supreme Court of Georgia. In that case a decision was rendered to the effect that sentences such as were involved in these cases, of city prisoners to the county chain gang, were unconstitutional. In answer to questions as to the action of the Supreme Court of Georgia that the trouble with the authority presented by the attorney for Judge Speer was that it was authority subsequent to the time the case in question was decided. In answer to the question, as to the reasons for litigating this case—i. e., as to whether it was for the purpose of testing the constitutionality of that class of sentences—Mr. Nottingham replied that his view was that the litigation was due to the desire of Judge Speer to release Jamison from the sentence imposed by the municipal court.

On further questions Mr. Nottingham replied that the motion to make the mandate of the supreme court the order of the lower court was made immediately after the mandate was received in Macon, and some time prior to the decision of the State court in the Pearson case. Mr. Nottingham stated that he had no distinct recollection as to the other habeas corpus petitions filed.

On being questioned as to the final determination of the case, Mr. Nottingham replied that he did not recall, as the chief matter of interest was "what we thought a high-handed intervention of the Federal court," and that there never was any unwillingness on the part of the city authorities to have the matter thoroughly tried in the courts of the State by orderly procedure.

TESTIMONY OF MR. E. A. WIMBUSH.

(Pages 530–532.)

Mr. Wimbush testified that in the year of 1904–5 he was employed as superintendent of public works for Bibb County, Ga., and recalled having received during that time for service on the chain gang a man named Henry Jamison; that he was received March 14, 1904, and released by order of Judge Speer on March 17, 1904; that he was rearrested by the chief of police on November 25, 1905, and again released on a new writ of habeas corpus on December 3, 1905. He stated further that Jamison had never been returned to him by the United States marshal. Also, that he was attached for contempt about December 3, 1905, the writ releasing Jamison and the contempt rule being "practically together."

TESTIMONY OF GRANVILLE C. CONNOR.

(Pages 49–53.)

Mr. Connor testified that he was deputy clerk of the court of the city of Macon, Ga., and that in 1904 he held the position of chief of police of the city; that after the decision of the supreme court in the Jamison case he was instructed by Mr. Wimberly, the city attorney, to rearrest Jamison; that he did so and turned the prisoner over to the superintendent of public works; that he was ruled for contempt and appeared in answer to the rule, and that after argument of the case the judge reserved decision, and that about three years later he was informed that the proceedings had been dismissed. He stated that he had the rule which was served upon him and would furnish it to the committee. In answer to the question of what became of Jamison, Mr. Connor stated that he turned him over to the superintendent of public works, and that the United States marshal came the next morning and took him out. Mr. Connor had no knowledge of the present whereabouts of Jamison.

TESTIMONY OF MR. MINTER WIMBERLY.

(Pages 474–521.)

Mr. Wimberly stated that he was city attorney for Macon for 14 years, and was holding that position during the litigation known as the Jamison case. Jamison was arrested for a violation of a city ordinance, tried, fined, and sentenced on two charges. Jamison was a common laborer and, he understood, worked at Judge Speer's house at times; that he was notified in his official capacity that the United States marshal had taken Jamison from the custody of Mr. Wimbush, superintendent of public works, on a writ of habeas corpus, the writ directing a hearing in Savannah a day or two after the service thereof, and that he called Judge Speer on the long-distance telephone and asked if he could extend the time a day or two, the statute granting the respondent in such a case a day for every 50 miles traveled. The judge granted the time and the case was argued at Savannah and continued until some later day, Jamison being enlarged on bond. Upon hearing of the case Jamison was discharged by Judge Speer and appeal was taken to the Supreme Court of the United States. Mr. Wimberly testified that there was a great deal of feeling in Macon over the case, and that the city contended that the Federal court had no jurisdiction; that the proper remedy for Jamison from the action of the city court was by appeal to the supreme court of the State. In answer to questions as to his action subsequent to the mandate of the Supreme Court of the United States reversing the action of Judge Speer in the Jamison case, Mr. Wimberly testified that he received the mandate some weeks after the case was argued, and that he contended that he had the right to immediately take action upon that decision, but that he considered it a better practice to wait 30 days; that he did actually wait 30 days after the rendition of the mandate, and then gave the mandate to Mr. Akerman, requesting him to take it to Judge Speer and ask what direction the court desired to give in the further progress of the case; that he wanted to avoid all feeling in the case and went so far as to suggest that he would pay

$5 toward the negro's fine to get rid of the case; that he waited 30 days and Mr. Akerman gave back the mandate, after which he prepared a short petition addressed to the court asking that the mandate of the Supreme Court be made the judgment of the district court; that upon presenting the matter to Judge Speer, who was at that time holding court in the Hotel Lanier, the judge replied that he was then entertaining bankruptcy matters and requested him (Wimberly) to file the petition with the clerk of the court, which he did.

Mr. Wimberly stated that in presenting the petition to the court he held it in his hand and made the request for action upon it, but did not remember whether he read it to the court or not. He stated, however, that he distinctly recalled the judge's telling him to file the petition with the clerk, and that he took the petition to the clerk and saw him mark it filed.

This precaution was taken as the mayor and city council were pressing him to have the mandate enforced. That after having seen the petition filed with the clerk of the court, he directed the chief of police to rearrest Jamison and deliver him to the superintendent of the county chain gang. That Mr. Connor, the chief of police did rearrest Jamison, and shortly thereafter an attachment for contempt was issued against himself, Mr. Connor, and Mr. Wimbush, the superintendent of the chain gang. He stated that he did not remember whether a separate petition for a writ of habeas corpus on the part of Jamison was filed, or whether it was in the same proceeding, but that Jamison was again released by the United States marshal. That he filed an answer to the rule for contempt, and that after argument of the case Judge Speer reserved decision and that the case "just wore out," that is, that he learned that some years afterwards the contempt cases were dismissed. Mr. Wimbush stated that Mr. Alexander Akerman was the attorney for Jamison in the habeas corpus proceedings, and also acted as attorney for the petitioner in the Pearson case.

Mr. Wimberly stated he did not know how long it was after the making of the mandate of the supreme court in the Jamison case before it was made the judgment of the lower court, and that he did not know of any reason why it was not made the judgment of the lower court immediately after it was filed.

That he had called the attention of Judge Speer to the mandate prior to the issuance of the attachment for contempt against himself and the other city authorities, and had made a motion to the judge to have the said mandate recognized in the expectation that the marshal would then deliver Jamison over to the recorder, but when it was not done he proceeded to enforce the sentence of the city court. Mr. Wimberly stated further that he distinctly recalls having prepared the written application to the court to have the mandate of the supreme court recognized and that he presumed a blank order to that effect was attached to the petition. Upon cross-examination Mr. Wimberly declined to admit that the "decision of the Supreme Court of the State of Georgia settled any of the issues involved in the Jamison case." He stated that the Supreme Court of Georgia in the Pearson case merely decided that the city recorder of Macon had no authority to sentence offenders to the Bibb County chain gang. That its only effect was to require such offenders to be sentenced to service

on the city chain gang. Mr. Wimberly stated that his view of the Jamison case was that Jamison was still a fugitive from justice. In response to a question from Mr. Volstead Mr. Wimberly stated he thought the rearrest of Jamison after the supreme court mandate was filed, and his second enlargement by the marshal, and the issuance of the rule for contempt under the case were practically contemporaneous. Mr. Wimberly stated that he had never been notified that the mandate of the supreme court was ever made the order of the district court, and that he was not advised that an order was entered to that effect on June 8, 1906.

Upon being recalled Mr. Wimberly was questioned by the chairman in regard to the petition which he had testified was presented to the judge while holding court at the Lanier House, the said petition not having been found by clerk of court when placing papers in the case in the record, but later located and turned over to the committee. Mr. Wimberly identified the petition, and stated that he presented it to the court and was requested by the judge to file it with the clerk, which he did.

TESTIMONY OF CECIL MORGAN.

(Pages 54–84.)

Mr. Morgan testified that he was the deputy clerk of the United States district court at Macon, Ga., and had held the position since March, 1899. That he knew something of the record in the Jamison case and had the papers in his possession. In response to the request of the chairman Mr. Morgan then placed the papers in the case in the record by reading the title of each, and turned them over to the stenographer. In answer to the question as to the delay in making the mandate of the Supreme Court the order of the district court from November 25, 1905, to June 8, 1906, Mr. Morgan stated there was nothing in the record to show Mr. Wimberly appeared before the court and filed a petition asking that the mandate of the Supreme Court be made the order of the district court, and that he had no recollection of such a paper being filed. On cross-examination Mr. Morgan stated that he believed the new Federal building was in the course of construction during the time the Jamison case was being litigated; also that during the early part of the year 1906 the Greene and Gaynor case was being tried at Savannah by Judge Speer. Mr. Morgan also read into the record the numbers and titles of certain other habeas corpus cases which were instituted during the time the Jamison case was pending.

Upon being recalled and questioned with regard to a petition filed by Mr. Minter Wimberly in the Jamison case, requesting Judge Speer to make the mandate of the United States Supreme Court the judgment of the district court at Macon, Mr. Morgan stated (pp. 525–527) that there was no such paper on file, and that nothing on the record showed the receipt of any such paper.

Upon being recalled a second time (pp. 616–617) Mr. Morgan was handed a paper by the chairman and questioned as to its nature, to which he replied, "This is indorsed 'in the District Court of the United States for the Western Division of the Southern District of Georgia, E. A. Wimbush, superintendent, et al. *v.* Henry Jamison, making the

mandate of the Supreme Court of the United States the judgment of the district court.'" Upon being asked where he found that paper, Mr. Morgan stated that it was in an envelope with a number of subpœna writs, marshal's bills, etc., that are filed in the Jamison case. He stated that the paper was not signed by the judge, but was placed among the papers in the Jamison case.

TESTIMONY OF HON. ALEXANDER AKERMAN.

(Pages 1053–1058.)

Mr. Akerman stated that he resided in Macon, Ga., and was an attorney by profession, and at present holds the position of United States attorney for the Southern District of Georgia. He said he remembered the Jamison case, and that his firm sued out the habeas corpus writ in that case; that in the spring of 1904, while the United States Court was in session at Savannah, Judge Speer sent for him to come to his chambers and stated that he had received a letter or telegram from Mrs. Speer stating that Henry Jamison had been sentenced to serve on the chain gang at Macon; that Mrs. Speer was very much distressed, and that if he (Akerman) would sue out a writ of habeas corpus he (the judge) would have Mrs. Speer pay him a fee; that he then telegraphed his brother to prepare a petition for Jamison, which was done, and when presented to Judge Speer, the judge granted a writ of habeas corpus returnable at Savannah; that there was a partial hearing at Savannah, and adjournment taken to a later day at Macon, when a full hearing was had; that Judge Speer rendered an opinion discharging Jamison from custody, and the city of Macon appealed to the United States Supreme Court; that he appeared before the court and argued the case for Jamison, but when the opinion came down the Supreme Court had reversed Judge Speer in a unanimous opinion; that Mr. Minter Wimberly, who represented the city of Macon in this litigation, brought the mandate of the Supreme Court and turned it over to him (Akerman), stating that he wanted his cooperation in getting Judge Speer to make the mandeat of the Supreme Court the judgment of the court below; that he took the mandate to the judge at his house, but for some reason the judge did not consider it advisable to make the mandate the judgment of the court below; that after this Mr. Wimberly was continually after him, stating that the counsel of the city was impatient for action on the mandate; that about this time he had occasion to leave the city for a few days, and requested Judge Speer to postpone action on the matter until his return; that he handed the mandate back to Mr. Wimberly and informed him that there would be a session of the court at the Hotel Lanier the next day; that the next morning when court opened Mr. Wimberly made a motion to make the mandate the judgment of the court below; that Judge Speer declined and assigned as his reason that the court was only in session for bankruptcy matters.

There is very little dispute as to the facts alleged in this case. The evidence shows that Judge Speer requested Mr. Alexander Akerman to sue out a writ of habeas corpus on behalf of the colored man, Henry Jamison, who had been employed at his house at times, and that he stated to Mr. Akerman that Mrs. Speer would pay him a fee; that Judge Speer required the city authorities of Macon to produce

Jamison in the Federal court at Savannah, 200 miles distant from Macon; that upon hearing the case he ordered the release of Jamison; and that after the Supreme Court reversed his decision, quashing the writ, and assessing the costs against the petitioner, the judge declined to recognize the mandate of the Supreme Court, although it was brought to his attention both by Mr. Akerman and by Mr. Minter Wimberly, the city attorney, who appeared in court and presented a written petition. Also that when the city authorities rearrested Jamison, after having made the efforts mentioned to get Judge Speer to recognize the mandate of the Supreme Court, they were attached for contempt of court and Jamison again released on a second writ of habeas corpus sued out by the same party who had brought the original writ at the instance of Judge Speer. It is also true that the mandate of the Supreme Court, although rendered October 15, 1905, and received in Macon on November 17, 1905, was not entered in the records of the district court at Macon until June 8, 1906.

The reply made to these charges by Judge Speer is in the nature of a confession and avoidance, and he puts his motive on the high ground of a desire to test the constitutionality of the law under which Jamison was sentenced by the city authorities.

The argument that these officials were attached for contempt because they acted before all of the legal formalities relative to the matter had been observed, when it is admitted that the mandate was presented to him by a formal petition and said petition and mandate filed with the clerk at his request, is hardly sufficient to justify Judge Speer in the light of the attending circumstances.

On pages 68 to 72 of Judge Speer's argument he states the history of the case from his standpoint up to the time Mr. Minter Wimberly presented the petition requesting that the mandate of the Supreme Court be recognized to the judge while holding court at chambers at the Hotel Lanier on November 24, 1905. The judge then recites that immediately after the mandate was filed with the clerk, at his suggestion, the city authorities rearrested Jamison and turned him over to the superintendent of public works, and instead of proceeding chronologically with the recital, and stating that he then immediately issued the rule against these authorities to show cause why they should not be attached for contempt, he recites the habeas corpus proceedings in the State court and follows that with the proceedings on the second writ of habeas corpus granted December 1, 1905, and proceeds to state the proceedings had on that writ up until December 18, 1905.

After reciting all these proceedings which happened subsequent to his contempt rule against the city authorities, he returns to the day following the rearrest of Jamison, and states the proceedings had on his contempt rule issued against the city authorities, thus making it appear that these attachment proceedings were had after the second writ of habeas corpus was issued, while as a matter of fact these parties were ruled on the 25th of November, which was a week prior to the issuance of the second writ of habeas corpus. A casual reading of this reply gives the impression that the officials of the city of Macon were attached for contempt for violating the order of the court on the second writ of habeas corpus, while the facts are that they merely rearrested Jamison on the authority of the mandate of the Supreme Court after it had been presented to Judge Speer and filed in his court

with a petition asking that it be made the order of his court; and the second writ of habeas corpus mentioned was not in existence until a week after he had taken this drastic action in the face of the mandate of the Supreme Court.

Considerable space is given by Judge Speer in his brief to the discussion of the law as to the constitutionality of the act under which Jamison was sentenced. It should be borne in mind, however, that the only issue made by the charge in this case is with regard to Judge Speer's conduct in defying the mandate of the Supreme Court, and in ruling the city authorities for contempt in an unwarranted manner, and in the face of the mandate of the Supreme Court. While it is true that sentences such as that passed upon Jamison were in the following year declared to be unconstitutional in that they required prisoners sentenced by the recorder of the city court to serve in the county chain gang with State prisoners, some of whom might be serving time for graver offenses; for the purposes of this investigation the matter was technical, and the only effect which the decision of the Supreme Court of Georgia had upon the situation was to require the city prisoners to be worked in the city chain gang instead of the county chain gang. Of course, this has no bearing whatever upon the action of the judge in refusing to recognize the mandate of the supreme court and in ruling the city authorities for contempt when they were guilty of nothing more than performing their official duties in an orderly and lawful manner.

The argument made in the reply of Judge Speer that the city authorities were attached for contempt for rearresting Jamison after he had been discharged by order of the United States court, and while this order remained unrevoked, appears to be stated in direct opposition to the facts, as the order of the United States court had been reversed and dismissed by the highest court in the land, and this fact had been brought to Judge Speer's attention and the mandate filed in his court upon his direction. The actions of Judge Speer in this case might be ascribed to error, or possibly to obstinacy on account of having his decision reversed, were it not proved that he and his wife were interested in Jamison and that the proceedings were instituted at his request and further that there was bad feeling between himself and the city authorities whom he took this opportunity to discipline. When the personal element is considered in connection with all of the circumstances of this case Judge Speer's motive may be fairly inferred.

The argument that the mandate of the supreme court was held up from November 24, 1905, until June 8, 1906, and not made the order of the district court on account of the fact that the Greene and Gaynor case was tried at Savannah in the spring and summer of 1906 is not very satisfactory, in view of the fact that it was filed with the clerk at Macon some two and a half months before the court convened at Savannah for the trial of the Greene and Gaynor case. The only action necessary was for the judge to request the clerk to enter the order.

ALLEGED ARBITRARY AND OPPRESSIVE CONDUCT IN RE HOLST *v.* SAVANNAH ELECTRIC CO. ET AL.

(Pages 1469–1481.)

Mr. Lawrence testified that he was employed as counsel for defendant in the case of Holst *v.* Savannah Electric Co. et al., in which Judge Speer granted an injunction against the railway company on the ground that property was being taken without due process of law; that appeal was taken to the circuit court of appeals and Judge Speer reversed because he had no jurisdiction; that when the mandate of the circuit court of appeals came, Mr. John Rourke was sent to Mount Airy, at which place the judge was stopping, about 400 miles distant from Savannah, to get Judge Speer to sign an order making the mandate the order of his court, and that Judge Speer declined to sign the order and dictated a telegram to Mr. Lawrence's firm for Mr. Rourke to sign as follows: "The court in Savannah not being in session, Judge Speer does not feel at liberty to sign the judgment of the circuit court. Besides he wishes to hear counsel upon the question: Has the circuit court of appeals jurisdiction to try an appeal involving the constitutional question in the case, and has not the Supreme Court of the United States exclusive jurisdiction? The court will convene at Savannah on the 28th instant; he would consider a motion to consent to waive the question mentioned." That the mandate of the circuit court of appeals was thus held up and that on the 26th day of November, 1904, two days before the court was to convene at Savannah, a second suit was filed and Judge Speer granted another restraining order in the case, which had the effect of nullifying the mandate of the circuit court of appeals; that after the second injunction was issued, Judge Speer tried to force the parties to settle the case and adjourned the hearing on the matter; that the following day the hearing proceeded just as if no such suggestion had been made by Judge Speer, and he finally dissolved the restraining order and denied the injunction.

It should be remembered in considering this case that during the time this mandate of the circuit court of appeals was being held up by Judge Speer the Savannah Electric Co. was prevented from continuing its operations and laying its tracks, and that this action on the part of the judge allowed the enemies of the company time to institute another suit, entirely defeating the mandate of the higher court.

TESTIMONY OF MR. JOHN ROURKE, JR.

(Pages 1564–1568.)

Mr. Rourke testified that he was an attorney practicing in the courts at Savannah, Ga., and that he remembered the case of Holst *v.* Savannah Electric Co. et al., tried in November, 1904, in which he acted for Messrs. Osborne and Lawrence, and took the mandate of the Circuit Court of Appeals reversing Judge Speer to Mount Airy, and presented it to the judge, requesting him to sign the order making it the judgment of the circuit court; that the judge refused to sign the order and stated that the Circuit Court of Appeals had no jurisdiction in the matter; that they had no business to take the matter

up or reverse him, and that he would refuse to sign it; that he left the judge, but as he had to wait four hours for his train, saw the judge again; witness did not recall whether he was sent for or went back of his own volition, and asked him if he would give some reason for his refusal to recognize the mandate of the Circuit Court of Appeals, and that Judge Speer then dictated the telegram which is mentioned in the testimony of Mr. Lawrence; that the judge stated further that he would take up the case when he convened court at Savannah.

TESTIMONY OF MR. E. P. DAVIS.

(Pages 1211–1224.)

Mr. Davis testified that in the case of Bean *v.* Orr he was employed to set up a mortgage against the bankrupt's estate, and that when he appeared in court with his associate, Mr. C. W. Smith, of Atlanta, Judge Speer appeared to be unable to understand which side of the case they were on, and after they had proceeded 15 or 20 minutes wanted to know why they were attacking the mortgage, and that they replied they were trying to sustain the mortgage; that the judge would not allow any further argument and stated the referee had passed upon the mortgage, and that he would sustain the judgment of the referee; that he took the case to the Circuit Court of Appeals and argued it there, and Judge Speer was reversed; that when they received the mandate of the Circuit Court of Appeals he and Mr. Smith "played Alphonse and Gaston, I trying to get him to go to the court to get the mandate made the judgment of the lower court, and he trying to get me, but he being the braver man, finally went, while I stayed at home"; that he was later informed by Mr. Smith that he (Smith) took the mandate to Judge Speer when court was in session at Augusta and that Judge Speer declined to entertain it, and that it was necessary for Mr. Smith to go back to Atlanta and then appear before the court in Savannah to have the mandate made effective.

Mr. Davis testified further that he had found it very difficult to get Judge Speer to sign orders, and that he had frequently written to Judge Speer in such matters and could never get a reply from him; that in the case of Murray & Smith, bankrupts, he had effected a composition settlement which had been approved by the referee and that he wrote to the judge, who was in North Carolina, three times without getting a reply and finally was compelled to go in person to Mount Airy, Ga., to get the order signed. That the judge stated to him that he had received his letters but that he made it a point to have the attorneys appear in person and present such orders. Mr. Davis stated further that he knew Judge Speer was absent from the district a considerable portion of the time, especially in the latter part of the summer and the first part of the fall.

This refusal to recognize the mandate of the circuit court of appeals should be considered in connection with the other similar cases shown by the evidence.

The testimony of Mr. Davis with regard to Judge Speer neglecting the business of the district, requiring attorneys to appear in person hundreds of miles away from the district, etc., is in line with the statements made by other witnesses.

REVERSALS.

In this connection it is noted that Judge Speer states in his brief, in referring to the testimony that he had been reversed by the circuit court of appeals in 19 out of 41 cases, that this showing is not so bad, in view of the fact that he has been on the bench for 28 years, and he states that it shows an average of less than one reversal per year. As a matter of fact, the 41 cases mentioned in the testimony cover only the years from 1907 to 1913, or only about one-fifth of the time he has been on the bench. The judge is undoubtedly aware that he has been reversed many more times than the number mentioned in the testimony, but he apparently endeavors to give the impression that this number includes all of the cases in which he has been reversed, and that is the impression which a person not advised on the subject would get.

The average instead of being less than one reversal a year, as he states, is more than three a year, and the percentage of reversals is nearly 50 per cent of the cases carried up.

The following references are made to statements of the circuit court of appeals in reversing Judge Speer:

MANN *v.* GADDIE.

(158 Fed., page 44.)

In reversing the action of Judge Speer in the above-entitled case, the circuit court of appeals used the following language:

The bill was presented to the judge and indorsed "filed" June 29, 1906, and on the same day the judge made an order appointing J. A. Dunwoody temporary receiver and ordered him to take possession of the property, described in the bill, and all moneys arising from the sale of any property described in the bill. An injunction was also issued as prayed for. The learned judge, in appointing the receiver, held that the case made by the bill was one of urgency, and which, under the provisions of the Georgia Code, rendered proper the appointment of a receiver.

The Georgia statute provides that:

Under extraordinary circumstances a receiver may be appointed before, and without notice to the trustee, or other person having charge of the assets. (Civ. Code, Ga., 1895, 4904.)

We have had occasion heretofore to decide that this statute is only confirmatory of a principal of equity procedure and jurisdiction. (Joseph Drygoods Company *v.* Hecht.) In the absence of this statute under extraordinary circumstances a court of equity may appoint a receiver without notice. The extraordinary circumstances referred to in the statute are the exceptional cases which sometimes occur and which make it necessary that the courts should have the power to act without notice to the defendant. The defendant may be out of the jurisdiction of the court, or can not be found, or some emergency may be shown, rendering the interference, before there is time to give notice, necessary to prevent waste, destruction, or loss; and a case may arise in which notice itself would jeopardize the safety of the property over which the receivership is extended. The jurisdiction without notice should never be exercised except in cases of imperious necessity when the complainant's right is clear and can not be protected in any other way. This is the rule wherever equity is administered and has been enjoined and enforced by repeated decisions of this court. Taking all the averments of the bill as true no reason is shown for the appointment of a receiver without notice. We heartily indorse the observation of the Supreme Court of Ohio, made in a case where the trial judge appointed a receiver without notice to the defendant.

Under the circumstances of the case the appointment of the receiver was an unwarranted exercise of judicial power which it is the duty of this court to reverse and set aside.

HUFF ET AL. *v.* BIDWELL ET AL. (SOLICITORS FEES).

(195 Fed., page 430.)

The circuit court of appeals in reversing Judge Speer in this instance stated that it was proper for all of the creditors to join in paying part of the attorneys fees incurred by the moving creditors and in reference to the question as to whether these fees should be paid out of the surplus due Mr. Huff stated:

But the plaintiff in this case in no sense represented Mr. Huff, the defendant. The suit was not brought for his benefit. There was no just reason for seizing more of his property than would pay his debts, principal and interest, and the costs of the suit. The property having been sold for a sum in excess, the proceeds necessarily came into court; but it was never the purpose of the suit to accomplish more than the payment of the debts and costs. If no creditors had intervened, if the suit had been brought by the plaintiffs to enforce and collect their judgments only, is there any known principle upon which Mr. Huff could have been made responsible for the plaintiffs' solicitor's fees? The intervening of the creditors may in such cases oblige them to contribute to the payment of the fee; but such intervention imposed no obligation on the defendant who is sued. On principal, it seems to us that this fee can not be added to Mr. Huff's indebtedness.

The court then cites a number of authorities sustaining the position taken.

There existed no reason or legal right to create at Mr. Huff's expense a larger fund than enough to pay his debts and the costs. If it had been known in advance that the property as advertised would produce a surplus, and it had been capable of a suitable division to avoid that result, only enough of it should have been sold to pay the debts and the costs. There would have been no authority to sell more of it for the purpose of paying the fees of complainant's solicitors.

The court concluded by reversing the decision of Judge Speer that the fee of $10,000 claimed by the complainant's solicitors be paid out of Mr. Huff's estate, and remanded the case for action and conformity with the decision rendered.

HUFF ET AL. *v.* BIDWELL ET AL.

(151 Fed., page 563.)

The circuit court of appeals used the following language in connection with Judge Speer's action in appointing a receiver in this case:

The bill in this case was filed August 5, 1899, and on that day the circuit court, without notice to the defendant in the suit, appointed a "temporary" receiver to take possession of and to hold and manage the property mentioned and described in the bill, referring to the property of the defendant. * * * We find no facts stated in the bill or shown by the record that made it proper to appoint a receiver without notice to the defendant. A court of equity has the power to make such appointment without notice; but, as has often been said, such powers should never be exercised except in a clear case of imperious necessity, when the rights of the plaintiff and the relief to which he shows himself entitled can be secured and protected in no other way. More than two years afterwards, on May 31, 1902, the case came on to be heard upon application to appoint a permanent receiver. The court granted the application, appointing the temporary receiver permanent receiver. The decree states as a fact that none of the parties to said cause contested the necessity for such appointment. * * * The case has now reached a final decree on the merits, and we can do nothing as to the appointment of the receiver except to cause the costs growing out of the receivership to be taxed as seems right under the circumstance. We therefore direct that all the costs of the receivership, of every nature and kind, from the appointment of the receiver without notice on August 5, 1899, until the defend-

ant seemingly acquiesced in the renewal of the order of appointment on May 31, 1902, be taxed against the plaintiff who procured the appointment.

The circuit court of appeals also relieved Mr. Huff of any part of the costs of the appeal in this case, assessing them against the plaintiff and the city of Macon, which had been made a party to the suit.

U. S. *v.* MERCHANTS & MINERS TRANSPORTATION CO.

(199 Fed., page 902.)

The language of the circuit court of appeals with reference to the order of Judge Speer for the preparation of the jury boxes in this case is as follows:

> The order of the trial judge instructing the jury commissioners as to the revision of the jury boxes and directing the placing therein of a certain number of names from the counties comprising the eastern division of the southern district of Georgia, though strictly unwarranted by law, was not so irregular or so erroneous that in the absence of proof of injury prejudice can be predicated thereon.

Attention is invited elsewhere to the fact that Judge Speer continued to follow the course which the higher court called strictly unwarranted by law after the decision mentioned was made.

FIRST NATIONAL BANK OF THOMASVILLE, GA., *v.* HOPKINS.

(199 Fed., page 873.)

In deciding this case against the bank Judge Speer stated the matter was too plain to be taken under advisement at all, and thereupon made a summary order calling upon the bank to pay over forthwith the money involved, some $10,298.48. Upon appeal, the circuit court of appeals reversed Judge Speer; held that his action in ordering the payment of this money was improper.

CABANISS *v.* RECO MINING COMPANY.

(116 Fed., page 318.)

The circuit court of appeals in reversing Judge Speer in this case, after reciting the averments in the bill asking for a receiver, used the following language:

> This bill seems to us to be clearly without equity, and it affords no sufficient basis for an order appointing a receiver. * * *
>
> It may be improper to say, in response to the discussion of that question, that the appointment of a receiver after notice before final trial is a jurisdiction which should be exercised with great care, and with studious effort to avoid mistake and oppression; but to appoint a receiver without notice is a usurpation of power that should be rarely used, and never except in a clear case of imperious necessity, when the right of the complainant on the showing made by him is undoubted and when such relief can be given in no other way. When such notice can be given it should be given, unless there is immediate danger of loss, or great damage, or irrevocable injury, or the greatest emergency, or when by giving notice the very purpose of the appointment of a receiver would be rendered nugatory; such instances are of rare occurrence in Federal courts, because of their power, when an injunction is asked for, to grant a temporary restraining order, which may be served at the same time that the notice is served, to prevent action by the defendant or his agent, and preserve the existing conditions until the application for an injunction and for a receiver can be heard.
>
> The order of appointing a receiver herein is reversed and annulled, and the receiver appointed is discharged, and he shall forthwith turn over and deliver all property

held by him as receiver to the party or parties from whom he received it; and this cause is remanded, with instruction to pass upon the receiver's account and compensation, all costs in the circuit court and the expenses of the receivership to be paid by the complainants in the three bills; and each party to the appeal will pay his own costs on the appeal; and the circuit court is directed to dismiss the bills and the consolidated cases without prejudice.

Let mandate issue immediately.

This is the case in which bankruptcy proceedings were brought against the Rogers & Joiner Co. shortly after the decision of Judge Speer was reversed, and the receiver dismissed by the circuit court of appeals; and in which Judge Speer promptly appointed the same party receiver upon the bankruptcy petition and thereby defeated the mandate of the circuit court of appeals in spite of the very plain and unmistakable language of the court in reversing him to the effect that the appointment of a receiver should only be resorted to in the most urgent cases.

JOSEPH DRY GOODS CO. ET AL. *v.* HECHT.

(120 Fed., page 760.)

The circuit court of appeals, in reversing Judge Speer in this case, used the following language:

Cases occur where it is necessary to the ends of justice for the chancellor to act at once and without notice to the defendant. But notice should be given and the defendant afforded an opportunity to be heard, except in cases of imperious necessity, requiring immediate action by the court, and where protection could be afforded the plaintiff in no other way. It is error for the court to act without notice except in such cases.

The court then cites a number of decisions sustaining this position, and proceeds:

We find nothing in the record before us showing such emergency. The defendants were entitled to notice before action was taken on the prayer for a receiver. But if notice had been given the appointment even then could not be sustained. The ultimate purpose of the bill is to collect the plaintiff's part of a debt which Joseph owes to Fried & Co. * * * There being no averment in the bill that the defendant Joseph is insolvent, and it not appearing that there would be any difficulty in collecting a judgment, the decree when rendered would be collectible; there is no necessity for seizing property for its satisfaction in advance of its rendition. The appointment of a receiver is an extraordinary remedy and can not be properly resorted to unless a necessity for it is shown. It follows that in a case like this a receiver should not be appointed unless the insolvency of the defendant debtor is shown. The court should not resort to so harsh a measure when it is not alleged that the defendant has no property subject to execution with which to satisfy the decree when rendered, there having been no allegation or proof of the insolvency of the defendant against whom the decree for the debt is sought. It was not shown to be necessary for the court to take possession of the stock of goods and money for the purpose of making it available to the plaintiff to satisfy a decree he might obtain.

Language stronger than that of the circuit court of appeals in some of these cases could hardly have been used except at the expense of the dignity of the court, but Judge Speer seems to have paid little attention to the admonitions of the circuit court of appeals.

ALLEGED NEGLECT OF COURT BUSINESS, OFFICIAL DUTIES, ETC.

TESTIMONY OF ALEXANDER AKERMAN, UNITED STATES ATTORNEY.

(Pages 1059–1061.)

Mr. Akerman testified that each year Judge Speer leaves the district in July and does not return until some time in November, and that during the time Judge Speer is in the district from November until July he devotes a great deal of his time to public speeches, etc.; that the criminal business of the district has been woefully neglected; that the judge only likes to try such cases as have some spectacular features which will attract attention in the public print; that owing to this neglect of the court business other judges, namely, Judge Sheppard, of Florida; Judge Grubb, of Alabama; and Judge Foster, of Louisiana, have been assigned to the trial of cases in Judge Speer's district; that the report of an examiner of the Department of Justice showed such an accumulation of business that the Attorney General complained and suggested that he (Akerman) take the matter up with Judge Pardee, which was done, and Judge Grubb was later assigned to clear up some of the accumulated business.

TESTIMONY OF A. A. LAWRENCE.

(Pages 1481–1489.)

Mr. Lawrence stated that Judge Speer is absent from the district a great part of every year, leaving some time in June and returning some time in November; that the judge goes to Mount Airy, Ga., or Highlands, N. C., or Toxaway, N. C., and that it is necessary for attorneys to travel hundreds of miles to get him to sign orders, etc., and that he had been forced to go to some of these places to see the judge, and that he had heard a good many other attorneys state that they had gone to Toxaway to see the judge, naming Col. Garrard and Judge Callaway.

Mr. Lawrence further stated that Judge Speer makes a practice of coming to Savannah in November or December for a few days, at which time he assigns cases for hearing in February or March and then returns in the spring and holds a term of court, after which he does not appear again until the next November; that the law provides for four terms of court each year at Savannah, but that the judge does not hold them, and is really only present for trying cases once a year. Mr. Lawrence stated further that Judge Newman and Judge Sheppard had been assigned to try cases in Savannah.

Mr. Lawrence also stated (pp. 1494–1498) that Judge Speer, upon leaving the district for his long absences, never made any arrangemen with another judge for the transaction of court business, and tha since the circuit court was abolished they have practically no judge; that, speaking generally, the conditions as they exist at present are intolerable; that they can not get court business attended to, and when it is done it is attended to with caprice; that the judge will not sign even the most formal order unless it is presented by the attorney in person and that every kind of trouble is experienced in getting little

formal things done. Judge Speer claims that it is necessary for him to go to the mountains for several months a year on account of his being a sufferer from hay fever.

TESTIMONY OF P. W. MELDRIM.

(Pages 1652–1656.)

Gen. Meldrim testified that Judge Speer does not hold his terms of court at Savannah according to law and has no method about it. That the first notice the attorneys or litigants have of the time when court will be held frequently appears in the newspapers the evening before court convenes the following morning. That the judge then proceeds to assign cases for trial and the attorneys have to accommodate themselves to such assignments. That generally speaking they have one term of court each year for the trial of cases; that the law fixes the dates of four terms of court to be held, and Judge Speer has never followed the provisions of the law.

Gen. Meldrim also testified that he had gone to Highlands, N. C., to have an order signed by Judge Speer, and had also had occasion to go to Mount Airy, Ga., for similar business, and that the court was held on the hotel piazza, with the ladies all around; that there was general complaint as to the difficulties of getting cases tried before Judge Speer.

TESTIMONY OF THOMAS S. FELDER.

(Pages 1953–1956.)

On this subject Mr. Felder testified that he had found it necessary to go outside of the district to try cases in Judge Speer's court. That he had been in Mount Airy, Ga., and Highlands, N. C., for that purpose. That when he was at Highlands court was held in the hotel parlor and notices sent around inviting ladies to be present and that the attorneys were made to perform like monkeys; that Judge Speer has no fixed time for returning to the district in the fall, and that it depends upon the bird season.

AFFIDAVIT OF MR. T. F. JOHNSON.

Mr. T. F. Johnson, the former clerk of the court in the southern district of Georgia, has furnished an affidavit with regard to the alleged neglect of business by Judge Speer, which refers also to other matters, and which may be found as Exhibit No. 14–D. Mr. Johnson states in substance on this subject as follows:

That during his term of service Judge Speer never held court in Savannah between May and November, but always omitted the regular terms of court provided by the statute in May and August; that it was the custom of the judge to come to Savannah some time in November or December of each year and stay a week or 10 days and assign cases to be tried in January, February, or March. That in the summer time Judge Speer leaves the District some time in July, goes to Mount Airy, Ga., or Highlands, or Toxaway, N. C., and holds court at those places, requiring the court records to be sent out of the district; that it was his custom to hold court in the divisions outside

of Macon once a year. That neither the officers of the court nor members of the bar could ever tell with any certainty whether a case assigned upon a particular date would be tried upon that date, as the judge would arbitrarily displace the assignment as he saw fit. That the judge would not publish his coming, or the time that he would hold court in advance, and that the clerk of the court could never tell the members of the bar with any degree of accuracy what date the court would convene.

Mr. Johnson sent word to the committee, in response to a call from them, that he was in ill health and could not appear before the committee and requested that his affidavit be used in lieu of his testimony.

The evidence on this subject shows that Judge Speer, as a general rule, holds one term of court for the trial of cases in Savannah and the other divisions of the district other than at Macon each year. With the exception of Macon, court has been held more frequently at Savannah than at the other place of holding court. The records show that Judge Speer held court at Savannah 13 days in 1899, 32 days in 1900, 30 days in 1901, 40 days in 1902, 27 days in 1903, 39 days in 1904, 23 days in 1905, 82 days in 1906, 20 days in 1907, 39 days in 1908, 22 days in 1909, 17 days in 1910, 37 days in 1911, 30 days in 1912. When it is remembered that Savannah is by far the largest and most important city in the judicial district it will be appreciated that this list shows a very small number of court days for that division, and the testimony of the large number of attorneys from Savannah to the effect that they had been required to make frequent visits to Mount Airy, Ga., and Highlands and Toxaway, N. C., in the summer time, in addition to the necessity of going to Macon for the transaction of court business at other times during the year, should be considered in connection with this condition. The testimony of Mr. Akerman, the United States attorney, and the report of the examiner of the Department of Justice, upon which the Attorney General requested the assignment of other judges to the district in order to clear the congested condition of the dockets, appear to strengthen the charge of neglect of duty.

It is true that Judge Speer has made a practice for many years of absenting himself from the district for about four months each year, and further, that during the time when he is in the district a large part of his attention is given to his duties at the Mercer University and to the preparation of addresses, etc., which have no connection with his judicial position. Reference is made to the list of addresses before different bodies presented in Judge Speer's brief.

Attention is also invited to the large amount of business which he refers to examiners, standing masters, and special masters, and the fees allowed for this service.

There is certainly no other district in the country where the attorneys have to travel from 200 to 400 miles during four months of the year to get court business attended to, but, on the contrary, it is the practice for the judge, in leaving his district even for a few weeks, to arrange with another judge to attend to the business in his absence. It is also true that terms of court are generally held according to law, and therefore frequently enough to prevent congestion and unusual delays in trying cases.

BRIEF OUTLINE OF MORE IMPORTANT EVIDENCE.

ALLEGED DEFYING OF THE MANDATES OF THE SUPREME COURT AND CIRCUIT COURT OF APPEALS.

There is considerable testimony on this subject, the principal cases being the Jamison case, the Savannah Electric Co. case, and the case of Bean *v.* Orr. The evidence in the Jamison case shows that Jamison was taken from the authorities of the city of Macon on a writ of habeas corpus sued out at the request of Judge Speer, owing to the interest of Mrs. Speer in Jamison as her servant, and that Judge Speer heard the case and liberated Jamison. It also shows that when Judge Speer's decision had been reversed by the Supreme Court, which ordered the dismissal of the writ of habeas corpus, and taxed the costs against the petitioner, and the mandate was presented to him with a written petition asking that it be made the judgment of the district court, the judge declined to recognize the mandate and directed that it be filed with the clerk. The city authorities thereupon rearrested Jamison in an effort to carry out the judgment of the city court, and on account of this effort these authorities were promptly attached for contempt of court by Judge Speer, although he had on the previous evening received the mandate of the Supreme Court and directed that it be filed with his clerk. The judge does not deny that he took this drastic action, but he endeavors in his brief to minimize the significance of it by first reciting that a second writ of habeas corpus was sued out on behalf of Jamison, making it appear from the sequence of his recital that his action was taken after the second writ of habeas corpus was sued out and on account of a violation of it, when as a matter of fact his action in ruling the city authorities for contempt was taken a week prior to the application for the second writ of habeas corpus.

As a matter of fact and of law, there does not appear to be any doubt that the Macon authorities in arresting Jamison after Judge Speer had been requested to recognize the mandate of the Supreme Court, and after it had been filed in his court at his direction were well within their rights. The effect of his action in thus refusing to give effect to the mandate of the higher court and in ruling the Macon authorities for contempt on account of their attempt to make the said mandate effective, was to entirely defeat the judgment of the city court and nullify the decision of the Supreme Court. The petitioner in this case, who was taken from the Macon city authorities who were acting in pursuance of their official duties, is still at large and beyond the jurisdiction of Judge Speer, and has never served the sentence which had been imposed, although the Supreme Court of the United States held that Judge Speer had no jurisdiction in taking him from the city authorities. It is also true that although the Supreme Court ordered the costs of these proceedings assessed against the petitioner these costs have never been paid by him. There is evidence to show that Judge Speer at this time was not on good terms with the city authorities, and he does not deny that the petitioner had been employed at his house and that Mrs. Speer requested him to intervene in his behalf. The statement made by Judge Speer that the law under which sentences of prisoners similar to the one imposed upon Jamison was changed the following

year so as to work such prisoners on the city chain gang, instead of on the county chain gang, does not appear to have any legal bearing upon the action complained of. The judge apparently does not attempt to justify his action in ruling these officers for contempt. His plea that the mandate of the Supreme Court was held up by him for seven months, or from November, 1905, to June, 1906, on account of the trial of the Greene & Gaynor case in the spring of 1906 is hardly tenable.

The action of Judge Speer in the Savannah Electric Co. case, wherein he refused to recognize the mandate of the Circuit Court of Appeals, although the attorneys made a special trip from Savannah, Ga., to Mount Airy, Ga., a distance of nearly 400 miles, in order to have the mandate made the order of the lower court, should be considered in the light of the personal feelings of the parties. The attorneys who caused him to be reversed in this case, Messrs. Osborne and Lawrence, had previously experienced unpleasant relations with the judge in the trial of another suit. It should also be noted that his action in holding up the mandate of the higher court was promptly followed by a second suit filed on behalf of the losing parties, and that upon this bill the judge promptly granted a second restraining order which had the effect of entirely defeating the mandate of the higher court. The proposition of the judge to hear an argument upon the question as to whether the circuit court of appeals had jurisdiction of a case in which that high tribunal had already reversed him, appears to be quite remarkable, especially in view of the fact that the proposition was made on his own motion and without any suggestion from either of the parties in interest.

The action of the judge in declining to recognize the mandate of the circuit court of appeals reversing him in the case of Bean *v.* Orr is open to censure, as the attorney who caused him to be reversed in this case, Mr. E. P. Davis, was the same attorney whom the judge had fined $50 for contempt of court on a rather slender excuse in the Stein case.

The evidence shows, therefore, that in these instances the judge was open to the suspicion of being actuated by personal feeling.

ALLEGED VIOLATION OF SECTION 67 OF THE JUDICIAL CODE, IN ALLOWING HIS SON-IN-LAW, A. H. HEYWARD, TO BE APPOINTED TO AND EMPLOYED IN OFFICES AND DUTIES IN HIS COURT.

The evidence in this case shows that Mr. A. H. Heyward, Judge Speer's son-in-law, has been employed as receiver, custodian and attorney for receiver, custodian and trustee, in many cases pending in Judge Speer's court, and also has shared equally in all of the fees of the standing master and special master of the court, Mr. J. N. Tally. It is true that Judge Speer claims the appointment as receiver and custodian do not come within the strict provisions of section 67 of the Judicial Code, but the appointment and employment of his son-in-law in all these different capacities are a violation of the spirit of the statute, if not its letter.

Mr. Tally, the standing, and often special, master of the court was appointed by Judge Speer, and his son-in-law shared equally all such master's fees allowed by the judge. The evidence shows that the son-in-law mentioned has undoubtedly received during the past

six years at least $25,000 from these sources, and it further shows that this son-in-law is a man of such small ability that it is reasonable to believe that practically all of this money was received by him owing to his relationship to Judge Speer. The employment of his son-in-law in the different capacities mentioned is in violation of the spirit if not the letter of the provisions of section 67 of the Judicial Code.

NEGLECT OF COURT BUSINESS, JUDICIAL DUTIES, ETC.

The evidence on this subject shows that Judge Speer has neglected the business of his court to such an extent that it has been brought to the attention of the Department of Justice in different ways and at different times and other judges assigned to his district for the purpose of relieving the congestion. It shows, further, that Judge Speer has made a practice of leaving the district from four to five months of each year, and has made no provision for the proper conduct of the business of the court in his absence, so that it has been necessary for attorneys to travel long distances and remain away from home at heavy expense for considerable periods. The evidence also tends to show that Judge Speer neglects cases of minor importance and those which will not bring newspaper notoriety to himself. It also shows that the judge has entirely omitted some of the regular terms of court in his district, and that the court when held by him is convened sometimes without notice to attorneys or officials and without due regard for the proper conduct of the court business. The judge contends that his poor health compels him to remain away from his district three or four months in the year.

VIOLATION OF THE LAWS IN DRAWING JURIES.

On this subject there is the testimony of a large number of gentlemen of the highest standing, including Hon. Thomas S. Felder, attorney general of the State of Georgia; Judge Samuel B. Adams, one of the foremost attorneys of the State of Georgia, a former marshal of the court, and a former clerk of the court, as well as the present United States attorney of the district, Mr. Alexander Akerman. All of these gentlemen testified to the illegal manner in which Judge Speer has drawn juries, and his answer does not appear to contain any direct denial of the charges made. While he does not admit the charges, he does argue that no harm has come from the conduct complained of, and that, although the parties may have been deprived of a trial by a jury drawn strictly according to law, yet no miscarriage of justice has resulted. When we consider that numbers of prominent men have testified that Judge Speer endeavors to influence the outcome of trials and the verdicts of juries, this method of drawing juries should be severely condemned.

IMPROPER USE OF RAILWAY FACILITIES.

The evidence on this subject, both oral and documentary, is quite conclusive, and it is not contradicted by Judge Speer. It shows that Judge Speer made a practice of requesting the lines of the Central of Georgia Railway system and of the Southern Railway to transport

his horses, servants, and household goods sometimes in carload lots, free of charge, over these railroads, covering a long period of years. The evidence also shows that this was a privilege which no other person ever enjoyed, and that it was not even extended to the high officials of the railway companies. Attention is invited to the 14 letters as Exhibit No. 27, showing that it was the practice of Judge Speer to request the Southern Railway to transport his household effects, including horses and servants, to and from his summer home regularly and that some of these free shipments amounted to two carloads of freight.

When it is remembered that during much of this time the Central of Georgia Railway system was in the hands of a receiver appointed by Judge Speer, his conduct in requesting these privileges and thereby avoiding the payment of hundreds if not thousands of dollars in freight bills, is certainly unbecoming a high judicial officer and is inconsistent with a proper sense of judicial ethics. The judge admits in his brief that he accepted free transportation from railroads and states that such privileges were also enjoyed by others, but he does not state that any other person ever requested the shipment of carloads of freight free of charge and the evidence is positive to the effect that no other person ever enjoyed such privileges or exemptions, not excepting the owners of the railways.

ALLEGED ABUSE OF AUTHORITY IN APPOINTING RECEIVERS WITHOUT NOTICE AND WITHOUT CAUSE.

The evidence on this charge shows that Judge Speer has appointed receivers and seized property of persons and corporations without notice in a reckless and unwarranted manner. In the case of the Joseph Dry Goods Co., as well as in the Beach Manufacturing Co. case, and that of the Georgia Central Railway and others, he summarily seized large properties and took them away from the owners causing great property loss as well as annoyance and embarrassment to the owners and great inconvenience to the public without sufficient facts having been alleged for such action upon ex parte hearings in which his orders were made. The evidence shows that important properties have been wrecked by his disregard of the rules in such cases and that many people have suffered loss of practically all of their property. This conduct of Judge Speer in this regard has been so improper that the circuit court of appeals has been frequently called upon to reverse him and in a number of instances has used strong language in criticizing his action. In the case of Joseph Dry Goods Co. the circuit court of appeals plainly stated that "taking all of the averments in the bill as true there could have been no reason for appointing a receiver without notice," and the language of that court in reversing Judge Speer shows that it considered his conduct very improper. In one case the court of appeals stated that Judge Speer's conduct was an unwarranted exercise of judicial power and in another it stated that his conduct in appointing a receiver without notice was a usurpation of power which should be rarely used. In another case in commenting upon the conduct of Judge Speer, the court stated that even if notice had been given to the defendant, the action of the judge in appointing the receiver could not be sustained. There is no doubt but that Judge Speer's love of power and his disregard for the rules of

equity in appointing receivers without notice, has resulted in great property loss and in some instances a denial of justice to parties. The testimony of many witnesses on this subject, as well as in connection with other charges, shows that this conduct has brought about conditions which are complained of all over his district.

ALLEGED IMPROPER CONDUCT IN RAISING FEE IN ORDER THAT SON-IN-LAW MIGHT PROFIT.

On this subject there is the direct testimony of the United States attorney that Judge Speer raised the fee of others in order that his son-in-law might receive a large fee without objection. This is denied by Judge Speer. While the testimony of Mr. Akerman is not corroborated by others, his word alone being opposed to that of Judge Speer, the statement made by him, when considered in connection with the testimony of many other persons of undoubted high character, relative to other subjects, is given more force.

ALLEGED ALLOWANCE OF EXCESSIVE FEES TO FAVORITES.

The evidence shows that in the case of the White Supply Co. Judge Speer increased the fee of his personal counsel in this investigation, Mr. Orville Park, as allowed by the master, from $350 to $550 without proper reason. The judge stated on the stand that this increase was made on account of additional money brought into the fund by Mr. Park, but the record shows conclusively that Mr. Park had no part in bringing in the money mentioned, and that if any additional compensation was proper it should have been allowed to other attorneys who were responsible for increasing the fund mentioned. The records show, however, that the attorneys entitled to this increase did not receive it. This case appears to be especially repugnant when it is considered that the excess allowance was made after Judge Speer was under investigation and after his friend, Mr. Park, had been engaged to defend him.

The records in the Rogers and Joiner case show that Judge Speer increased the extra compensation allowed this same gentleman, Mr. Park, from $500 to $800, and that this extra compensation was paid him in addition to the amount seemingly allowed by the law, which provides that the commissions of such officials shall be in full compensation for their services. This extra compensation was paid to Mr. Park as trustee in the bankruptcy case above mentioned, and the records also show that his firm was employed as attorneys for trustee, and that Judge Speer increased their compensation from $1,500 to $1,800, and of course Mr. Park shared in that increase.

The records in the case of Standard & Son, Bankrupts, show that Judge Speer allowed his friend, and clerk of the court, Mr. Cook Clayton, $600 commissions, whereas it appears that he was entitled to only $23.16, a composition settlement having been made, and the law prescribing the amount to be paid in such circumstances.

ALLEGED IMPROPER CONDUCT IN ALLOWING THE DISSIPATION OF ASSETS OF BANKRUPTCY ESTATES BY UNNECESSARY EMPLOYMENT OF FAVORITES, RELATIVES, ETC.

The evidence on this subject shows that Mr. George F. White, Judge Speer's friend, and also United States marshal, received more than $10,000 as fees resulting from appointments made by Judge Speer, and also that in many cases Judge Speer's son-in-law was employed as receiver or custodian, and large fees paid, apparently through the sole influence of his relationship to the judge. The evidence also shows that Judge Speer has taken personal interest in the partnership of his son-in-law, and that he has gone so far as to offer this partnership to at least one attorney.

ALLEGED IMPROPER CONDUCT IN PRESIDING IN CASES WHERE HIS SON-IN-LAW WAS INTERESTED IN A CONTINGENT FEE.

There is evidence to show that Judge Speer has made a practice of presiding in cases where his son-in-law was interested in contingent fees, particularly in bankruptcy cases, where his son-in-law was retained as attorney for petitioning creditors, as well as attorney for receiver, etc., and in which his fee was contingent upon the outcome of the cases.

The judge states that he has not "consciously" presided in any case where his son-in-law was interested in a contingent fee, but in the very nature of the case he could not have been ignorant of the fact that in any of the bankruptcy cases mentioned the fee of his son-in-law was dependent upon the outcome of such cases, and his statement that he has not consciously presided in any such case is not entirely convincing. It does not appear that the judge ever disqualified himself in a case where his son-in-law was interested until after he was under investigation, and there is evidence to the effect that he had threatened to punish any person for contempt who suggested that he disqualify himself under such circumstances.

ALLEGED OPPRESSIVE CONDUCT IN ENTERTAINING MATTERS BEYOND HIS JURISDICTION, FINING PARTIES, ETC.

The evidence on this subject shows that Judge Speer has made a practice of entertaining cases plainly beyond the jurisdiction of his court, and that his decisions in such cases have sometimes been rendered in favor of relatives or favorites, which makes it appear that his conduct in assuming jurisdiction has not been due entirely to error, but possibly to favoritism toward some or ill-feeling toward others. The testimony shows that in the case of J. T. Hill, Judge Speer entertained a suit filed by his kinsman against Mr. Hill for the collection of $75, and made a summary order against Mr. Hill, stating that he would be sent to jail unless he paid the money, and refused to grant an appeal or fix a supersedeas bond. Also, that when he found that Mr. Hill and his attorney had gone to Atlanta to effect an appeal, he ordered a rehearing and later reversed himself without any application therefor.

The evidence also shows that Judge Speer has fined the employees of the custodian of the Federal building for contempt of court, on

account of their alleged failure to properly perform their duties in cleaning the building, while, as a matter of fact, these employees are only responsible to the custodian, and Judge Speer has no jurisdiction over them.

In the E. P. Davis contempt case, and in the case of the rule against Mr. Gordon Saussy, Judge Speer likewise plainly exceeded his jurisdiction.

DECIDING MATTERS IN FAVOR OF RELATIVES, ETC.

The evidence on this subject shows that Judge Speer has made a practice of appointing favorites to many positions and allowing large fees to them, as well as rendering decisions in favor of such parties. It shows that in the E. B. Harris case numerous relatives and favorites received large fees, and that Judge Speer's personal counsel, Judge Andrew J. Cobb, was brought into the case and paid a fee of $400 for a few days' work, although he resided in another judicial district. Judge Speer decided in favor of his attorney, Mr. Orville Park, in the case of a bank in Thomasville, Georgia, *v.* Hopkins, and was reversed by the circuit court of appeals. In the case of United States *v.* Frank Scarboro the evidence shows he used every effort to have the side represented by the firm of his son-in-law prevail. The testimony of Mr. John R. L. Smith, Mr. W. H. Burwell, and Mr. J. T. Hill, all gentlemen of high standing, relative to other cases is strong and direct on this charge.

ALLOWING MONEY TO REMAIN ON DEPOSIT WITHOUT INTEREST.

The evidence on this subject shows that in the Huff Case, Judge Speer allowed the money realized from the sale of Mr. Huff's property to remain without interest in the bank known as the "family bank," of which his brother-in-law is vice president, for a number of years, although the matter was brought to his attention. This money amounted to nearly $100,000, and Mr. Huff has figured that the deposit profited the bank mentioned at the rate of $6,000 per year.

Judge Speer claims that no formal application was made to him to have this money placed at interest, but the evidence shows that the matter was brought to his attention in writing as well as otherwise, and it is not understood how a just and conscientious chancellor could allow this money to profit the bank in which his brother-in-law was interested for so long a time, when it was within his power to remove the unpleasant imputation that he was improperly favoring his kinsman in the matter mentioned.

The evidence shows that in the Max Alexander case formal application was made to Judge Speer by both the parties in interest to have the sum of money involved, $46,000, placed at interest, and that he declined to grant the necessary authority, which resulted in the large sum of money mentioned remaining without interest for several years.

ALLEGED IMPROPER CONDUCT IN REFUSING TO ALLOW DISMISSAL OF LITIGATION.

The evidence on this subject is given by Messrs. Anton P. Wright and W. V. Davis, and it shows that Judge Speer refused to dismiss

the case against the Savannah Electric Co., although all parties in interest were in accord on the proposition, and that he threatened the attorneys with punishment for merely attempting to dismiss the case which they had instituted. It also shows that immediately upon taking this action Judge Speer appointed his friend, Mr. George F. White, receiver of the company mentioned, and that the receiver promptly employed Judge Speer's son-in-law to represent him, both of the parties mentioned taking the train at once for Savannah to take charge of the company. From this appointment Mr. White received a fee of $850, and Judge Speer's son-in-law received a fee of $1,125. The evidence shows that the Judge's son-in-law did very little work in this case, although he received the large fee mentioned. It will be seen, of course, that if the judge had allowed the dismissal of this case, as the parties desired, his favorite and his son-in-law would not have received the fees mentioned.

ALLEGED GENERAL OPPRESSIVE CONDUCT.

Many hundreds of pages of testimony were taken on this subject, and of all the scores of witnesses examined only two spoke favorably of Judge Speer with reference to this charge. The testimony shows that Judge Speer has made a practice of endeavoring to coerce defendants in criminal cases into pleading guilty, and parties in civil suits into compromises. He has exercised every possible influence over juries to obtain a verdict in accord with his desires. Also, that he has decided cases without hearing the evidence on either side; that he has treated attorneys at the bar in an improper manner in his efforts to coerce verdicts to suit himself; that he has compelled parties to make unreasonable bonds in order to regain possession of their property; that he has exerted improper influence to convict parties; that he takes part in the trial of cases and shows partiality and bias in the examination of witnesses, the treatment of attorneys, and in his remarks to the jury, etc.; that he has carelessly sacrificed the good reputation of attorneys; that he has subjected the Government's attorneys to humiliation and loss of prestige; and that his general conduct has been such as to bring the United States Court for the Southern District of Georgia into ill repute. The testimony of 40 or more of the most prominent attorneys and business men of southern Georgia was given to the effect that Judge Speer's conduct of the court generally is such as to cause the public to lose confidence in the integrity and fairness of the court.

ALLEGED IMPROPER CONDUCT IN PRESIDING IN CASES WHERE HIS SON-IN-LAW WAS INTERESTED IN A CONTINGENT FEE.

TESTIMONY OF GEN. P. W. MELDRIM.

(Pages 1641–1645.)

Gen. Meldrim testified that he represented the defendant, Joseph Hester, sheriff of Montgomery County, Ga., in a suit for false imprisonment, in which the firm of Talley & Heyward was employed on behalf of the plaintiff. That Talley & Heyward were working on a contingent fee, and he stated to Mr. Talley that, as he had a con-

tingent fee in the matter, and as his partner, Mr. Heyward, was a son-in-law of Judge Speer, he did not propose to take any chances with the case, as the judge ought to be disqualified, but that Mr. Talley persuaded him not to raise the point. He states that he has since regretted that he did not, as a judgment for $5,000 was recovered against the sheriff for false imprisonment, when he, the sheriff, had intended merely to do his duty, and that the people chipped in and made up the amount to the sheriff and reelected him as sheriff of the county, which position he still holds. Mr. Meldrim then stated the facts relative to the case against Hester, which were to the effect that a party was arrested by the town marshal at Mount Vernon, Ga., the county seat of Montgomery County, as a fugitive from justice, and that it later turned out that the wrong man was arrested; that upon these facts a suit for damages was brought against the sheriff, Talley & Heyward being attorneys for the plaintiff. During the trial Judge Speer fairly "took charge of the case," favoring the plaintiff in his rulings and conduct, and a judgment for the plaintiff for $5,000 resulted. Gen. Meldrim further stated that the little town of Mount Vernon, where the suit arose, is 210 miles from Macon, where the firm of Talley & Heyward is located.

The evidence in this case tends to show that Judge Speer "took charge of it," and that the firm of his son-in-law, Talley & Heyward, had no trouble in securing judgment against the sheriff of Montgomery County, Ga., for $5,000 in a damage suit brought against the sheriff for mistakenly but innocently keeping in custody a prisoner arrested by the town marshal, under the impression that he was a different party. It is difficult to understand how such a judgment could have been obtained against the sheriff in these circumstances, as described by Gen. Meldrim.

Judge Speer states he has never "consciously" presided in a case where his son-in-law was interested in a contingent fee, but he does not contradict the testimony of Gen. Meldrim, to the effect that plaintiff's counsel was actually working on a contingent fee in this case. The case was in its nature so speculative that any layman would readily understand that the fee would be in proportion to the amount recovered, and it would be unkind to expect less of the judge, especially when the testimony of Gen. Meldrim is considered with regard to the manner in which the judge "took charge of the case" in which his son-in-law was of counsel for the plaintiff.

TESTIMONY OF MR. ALEXANDER AKERMAN, UNITED STATES ATTORNEY.

(Pages 2450–2470.)

Mr. Akerman testified that on November 5, 1910, he had occasion to visit Judge Speer's chambers at Macon, and found the judge very much disconcerted, on account of some one having suggested the filing of a motion to disqualify him (Judge Speer) from sitting in the trial of a case in which Talley & Heyward had a contingent fee involved, and that he considered it a direct insult to him and a reflection upon his personal and judicial honor and integrity, stating that anyone who made such a suggestion would go to jail. That he suggested

to the judge that he had better go slow, as there was very respectable authority to the effect that he was disqualified. That he later addressed a letter to the judge in which he quoted authorities to the effect that he was disqualified; that since this occurrence Judge Speer has continued to preside in cases where the fee of his son-in-law was contingent upon his success. In answer to questions, Mr. Akerman stated that he had never known Judge Speer to disqualify himself until the investigation of his conduct was under way.

On this subject Mr. Akerman testified that in some litigation in South Carolina the firm of Callaway & Irwin represented the side in which Mr. Heyward was interested, and were paid a fee for their services, and that Judge Speer was angry because he had been allowed by Mr. Callaway to fix his fee as receiver's attorney in a case in the district court, while under the impression that Callaway had performed the service in the case in which Mr. Heyward was interested, free of charge. In explanation of this statement Mr. Akerman testified that the court in South Carolina had allowed a fee to Mr. Callaway, but that Judge Speer understood that Callaway had rendered the services to his son-in-law gratuitously. In fixing fees in Judge Speer's court in the case of the Georgia Car Co., the judge had been left in ignorance of Mr. Callaway's receiving the fee in South Carolina allowed by the court there. Judge Speer was of the impression that he was under obligations to Mr. Callaway's firm on account of the services rendered to Mr. Heyward.

Mr. Akerman testified further that Judge Speer had frequently presided in cases where the firm of Talley & Heyward, and later the firm of Isaacs & Heyward were attorneys for petitioning creditors in bankruptcy cases, and that necessarily their fees were contingent upon adjudication.

THE GRAY LUMBER CO. CASE—TESTIMONY OF MR. W. W. LAMBDIN.

(Pages 2273–2285.)

Mr. Lambdin testified that he was of counsel for the Gray Lumber Co. in bankruptcy proceedings instituted against that concern April 22, 1913, by Messrs. Isaacs & Heyward as attorneys for the creditors. Mr. Lambdin then proceeded to explain the circumstances under which the petition was filed against the Gray Lumber Co. and stated that while the assets of the company were greatly in excess of its liabilities it was temporarily embarrassed for cash and had made an agreement with its creditors by which the company was to be operated by a committee of the creditors as trustees until it could realize sufficient money from the operation of its business to pay its debts; that the property of the concern consisted of a railroad company, sawmills, and large tracts of timber; that after this arrangement was consummated a few creditors representing very small claims, some of which were spurious, filed a bankruptcy petition against the company, Isaacs & Heyward representing them; that upon this petition Judge Speer granted a rule nisi requiring the company to show cause why a receiver should not be appointed; that Mr. Gray, president of the company, went to Macon, and some trade was made with the attorneys for petitioning creditors whereby Mr. Gray consented to the appointment of a receiver in advance of the hearing on

the rule nisi; that the committee of creditors in charge of the property was kept in ignorance of this, and as they were the principal parties interested they resisted bankruptcy on behalf of the company. The creditors were anxious to keep the case out of court in order to avoid the heavy expenses and fees that would be paid to officials. Mr. Lambdin states when the question of receivership was tried they showed by Mr. Gray that the claim of one of the parties was spurious and that without this claim the petition did not carry a sufficient amount to give the bankruptcy court jurisdiction. He also states that the other claims were very small. The attorneys for the company asked for the dismissal of the receivership, stating there was no necessity for a receiver, and that a receiver should be appointed only when absolutely necessary for the preservation of the estate (citing Faulk *v.* Sterner, 155 Fed. Rep., p. 681; also Oakland Lumber Co., p. 684). Mr. Lambdin stated the action of Judge Speer in thus taking the property away from the committee of creditors was without justification, and it should be considered in view of his relationship to the attorneys for the petitioning creditors. He testified that he showed to the court that the claims of the petitioning creditors would be paid in full, and that they had the money in court ready to pay them, but in spite of this fact, and in spite of the fact Judge Speer stated the property would be perfectly safe in the hands of the trustees mentioned, he declined to dismiss the receiver; that the attorneys for the company at once gave notice of an appeal, and that they have made persistent and repeated efforts to get a transcript of the record from Judge Speer's stenographer, in order to file the appeal, but although more than six months have elapsed they have been utterly unable to get a copy of the record; that all this time the estate remains in the hands of a receiver and that the six months allowed in which to make an appeal has elapsed.

The physical assets of the Gray Lumber Co., in round numbers, amounted to $300,000. The total indebtedness of the company was $150,000. The owners of $149,000 of the indebtedness elected the trustees to manage the business. They borrowed $10,000 to pay the outstanding claims of $1,000 in full, and operate the business with the consent of the company. This was the condition of the company's business when it was thrown into bankruptcy. This condition was shown to the court upon the hearing, but with no avail.

TESTIMONY OF HON. JACOB GAZAN.

(Pages 2358–2396.)

Mr. Gazan testified that he was an attorney practicing in the city of Savannah and was employed by a committee of creditors of the Gray Lumber Co. to represent them in bankruptcy proceedings filed against the concern mentioned in the spring of 1913; that this company, at the time it was attacked by bankruptcy proceedings, was doubly solvent, its actual assets being worth $302,336.96 and its total liabilities being $144,500.31; that it owned two sawmill plants, large tracts of timber land, and the capital stock of the Ocilla, Valdosta & Pine Bloom Railway Co., in addition to large quantities of live stock, vehicles, and commissary; that business being poor and ready cash difficult to obtain, this company entered into an agree-

ment with its creditors by which it was to be operated by a committee of trustees until its debts were paid. Mr. Gazan then presented to the committee a statement (Exhibit 32) showing the condition of this concern and testified that after the arrangements mentioned had been effected the committee of creditors was amazed to find that a petition in involuntary bankruptcy had been filed against the company on April 22, 1913, by Messrs. Isaacs & Heyward on behalf of three small creditors representing claims amounting in all to about $500, which claims had been provided for by the trustees and were to be paid promptly.

Mr. Gazan then introduced correspondence showing the manner in which this bankruptcy petition was instituted and testified that the trustees determined to resist the bankruptcy petition on behalf of the creditors; that they held a meeting and agreed to pay the claims of the moving creditors in full and reasonable fees to their attorneys in order to get the matter out of court, but that the attorneys, Isaacs & Heyward, refused to have the matter dismissed on those terms; that these attorneys asked for the appointment of a receiver in a supplemental petition filed April 26, 1913, and Judge Speer without notice appointed a temporary receiver to take charge of the properties of the company, although he had issued a rule upon the original petition, returnable the 30th day of April, requiring the parties to show cause why a receiver should not be appointed on that date; that he subsequently learned that Mr. Gray, the president of the company, had made a trade or deal with Isaacs & Heyward, the attorneys for the moving creditors, by which he agreed to consent to the receivership, and that Judge Speer appointed him (Gray) receiver. Mr. Gazan testified further that he, on behalf of the creditors, prepared an answer and at the hearing in Macon on April 30, 1913, proved that the claim of one Mr. Rothmell for $300 had no existence in law or in morals, and that without this claim the bankruptcy petition filed by Isaacs & Heyward would fall on account of insufficient amount of claims; that he proved further that the other claims represented by Isaacs & Heyward were very small and that they had been obtained by improper means. He introduced letters to show the unfair methods employed to obtain these claims for the purpose of putting the company in bankruptcy; that at the conclusion of the hearing, in spite of the showing, Judge Speer announced that he would make the receivership permanent, and stated from the bench that he was satisfied the trustees put in charge of the property by the owner and the creditors would handle it properly, but proceeded to state: "You people down in Savannah seem to think that you can run things your own way; you tried to do it in the Electric Supply Co. case; but I want you to understand that as long as the bankruptcy act is upon the statute books no debtor has any right to enter into any voluntary adjustment with his creditors, but this court will manage its affairs."

Mr. Gazan stated that the judge within a day or two made the receivership permanent, and he, on behalf of the trustees mentioned, noted an appeal; that they were all very much outraged on account of the manner in which Judge Speer had conducted the case, and decided to have it reviewed in the higher court. Mr. Gazan then testified as to the efforts made by him to get a transcript of the record in

this case in order to prepare an appeal, stating that he wrote to Mr. W. A. Cameron, Judge Speer's stenographer, and also court reporter, on May 6, 1913, requesting him to furnish a copy as quickly as possible; that he received no reply, and on May 9, wrote a second urgent letter, requesting the transcript; that he then received a reply from Mr. Cameron, dated May 9, stating he would furnish the transcript as soon as he could get to it; that the transcript did not arrive and that on June 7, 1913, he again wrote to Mr. Cameron, referring to his former letters and urging the prompt preparation of the transcript; that he did not receive any response to this communication until June 21, when Mr. Cameron replied that he had received the several communications sent by Mr. Gazan, and made further excuses for his delay; that on June 23, 1913, he wrote a fourth letter to Mr. Cameron, requesting the transcript, and on July 16 wrote a fifth letter to him, without receiving any reply; that on July 22 he wrote a sixth time to Mr. Cameron, who had by that time accompanied Judge Speer to Mount Airy, Ga., and urged still more persistently that the transcript be furnished; that on August 19 he wrote a letter to Judge Speer, informing him of the difficulty in obtaining the transcript desired; that Judge Speer made no reply to this letter, although it was properly stamped, addressed, and mailed in a return envelope; that on August 26, 1913, he wrote a seventh letter to Mr. Cameron, calling his attention to all of his other communications, one of which had been sent by registered mail, and that he received no reply to the seventh and last letter. Mr. Gazan stated also that he had learned from Max Isaacs, the partner of Mr. Heyward, that Mr. Cameron had asked him (Isaacs) whether he should furnish this transcript to Mr. Gazan; also that he is still without this transcript and that the time allowed for appeal has now elapsed.

TESTIMONY OF WARREN A. CAMERON.

(Pages 2399–2408.)

In answer to the questions with regard to correspondence between him (Cameron) and Mr. Gazan, showing Mr. Gazan's efforts to get a transcript of the record in the Gray Lumber Co. case, Mr. Cameron stated that the only reason he could give for not furnishing the transcript was that he had been too busy to do so. Mr. Cameron told of his having to go to Mount Airy with Judge Speer and having left his notes at Macon and also referred to the illness of his wife. In answer to the question as to whether this was his method of doing business for lawyers as an officer of the court, Mr. Cameron stated that it was not; but he gave no reason for making the exception in this case, except that he had not been able to get to it, etc.

The evidence in this case shows that Judge Speer appointed a receiver for this large corporation upon a bankruptcy petition filed by the firm of his son-in-law and took the property away from the trustees operating it, although they offered to pay all the claims represented in the petition. It should be remembered that the conduct of Judge Speer in this case, as well as in other similar cases mentioned, directly benefited the judge's son-in-law in a financial way.

The evidence shows also that appeal was noted from the decision of Judge Speer and that although the parties have endeavored per-

sistently and strenuously to obtain a transcript of the record from Judge Speer's stenographer, by writing no less than seven letters to the stenographer and also by writing to Judge Speer—these efforts covering a period of six months—they have been entirely unable to obtain the necessary transcript, and that the six months allowed for such an appeal has long since elapsed. It is denied by Judge Speer that he contributed to this conduct on the part of his stenographer, but it is remembered that the transcript was desired for the purpose of appealing from a decision rendered by him in favor of the firm of his son-in-law. The evidence shows also that during this long time the company has been kept in the hands of the receiver appointed by Judge Speer and that great injury has been done to its property.

L. CARTER CO. CASE.—TESTIMONY OF MR. W. W. LAMBDIN.

Mr. Lambdin testified that he was employed to defend this com pany in the bankruptcy proceedings filed against it on May 2, 1913 by Messrs. Isaacs & Heyward on behalf of petitioning creditors; that there were four petitioning creditors in this petition and that the claim of one, W. J. Broadhurst, was used without his authority or consent, and that without it the petition would have contained claims insufficient to bring it within the jurisdictional amount. That there was not a single legitimate claim in the petition. That Messrs. Isaacs & Heyward, shortly after the petition in bankruptcy was filed, asked for the appointment of a receiver, and that Judge Speer without notice and without any hearing appointed Mr. Henry C. Tucker, deputy marshal of his court, as receiver or custodian, at the same time issuing a rule nisi requiring the company to show cause why the receivership should not be made permanent; that the company appeared and answered the petition and presented an affidavit from Mr. W. J. Broadhurst stating that his claim was used without his knowledge or consent and that he objected to it being used. That they denied the validity of the other claims and asked for a jury trial; that Judge Speer thereupon struck from their answer the statement that the name of Broadhurst had been used without his knowledge and consent as being scurrilous and impertinent, and at the same time stated the placing of this allegation in the answer was improper and reprehensible; that they produced evidence to show that none of the claims were legitimate and put Mr. Broadhurst on the stand, who testified that his name had been used without his authority, but that Judge Speer would not allow his testimony to be used. Athat the case proceeded and that the following morning Mr. Broadhurst employed an attorney, who arose at the motion hour and stated that he wished to submit a motiom on behalf of Mr. Broadhurst, asking that his name be stricken from the bankruptcy petition, but that Judge Speer refused to hear him; that the case proceeded and they proved that the claims were without foundation, and Judge Speer finally made an order dismissing the temporary receiver, but impounding the books of the company, which he modified on objection of counsel and allowed the company to recover its books.

Mr. Lambdin testified further that after this order was made Mr. Isaacs made the proposition to him that if the company would pay the costs of the proceedings and the fee of the custodian the pro-

ceedings would be dismissed, which offer was finally accepted and the petition dismissed.

Mr. Lambdin then identified the signed statement made to the examiner of the Department of Justice, which was filed with the clerk as a part of the record. Mr. Lambdin testified on cross-examination that Judge Speer disqualified himself in the latter part of the Beach Manufacturing Co. case, but that he did not do this until the investigation against him had been started, and that possibly the presence of the examiner of the department at Macon had something to do with it.

TESTIMONY OF R. L. BENNETT.

(Pages 2409–2417.)

Mr. Bennett testified he was an attorney at law residing at Jessup, Ga., and that during the bankruptcy proceedings against the L. Carter Co., held at Macon in May, 1913, he was employed by Mr. W. J. Broadhurst, whose name had been used in the bankruptcy petition in question without his authority, to present a petition to the court requesting that his name (Broadhurst) be stricken from the petition. He testified that after the attorneys for the L. Carter Co. had failed in their efforts to get the name of Mr. Broadhurst stricken from this petition, he prepared a motion and presented it to Judge Speer at the motion hour, but that Judge Speer refused to hear him. He stated also that the name of Mr. J. R. Thomas, which was signed to the bankruptcy petition as Mr. Broadhurst's attorney, was signed without Mr. Thomas's permission. Mr. Bennett stated that when he asked the court to consider his motion for the withdrawal of the name of Mr. Broadhurst he refused this request, and that he then asked that he be permitted to file it with the record, and that Judge Speer replied he would determine that matter later; that Judge Speer gave no reason for refusing to entertain his motion; that it was presented at the motion hour and that he was a practicing attorney representing Mr. Broadhurst.

Mr. Bennett then testified that Max Isaacs, the partner of Judge Speer's son-in-law, who filed the petition in this case, had been indicted in Wayne County, Ga. (the home of Mr. Bennett), for barratry and that his conduct in the L. Carter case was one of the matters embodied in the indictment. Mr. Bennett also testified that he understood that Max Isaacs had been indicted in Appling County for barratry. He also testified that Judge Speer allowed this same Max Isaacs to insult him (Bennett) when he endeavored to get the name of Mr. Broadhurst withdrawn from the bankruptcy case, by saying that he (Bennett) had been bought off by the defendant; that he told the court this statement was maliciously false and that Judge Speer paid no attention to it, while he had almost immediately theretofore reprimanded the counsel opposing Max Isaacs for making a statement in answer to the bankruptcy petition that the name of Mr. Broadhurst was included without authority. In answer to questions as to the final determination of the case by Judge Speer, Mr. Bennett testified that the examiner of the Department of Justice was present in court and that he understood that this fact had more to do with the judge's action than anything else.

The evidence in this case shows that Judge Speer appointed a receiver without notice in an ex parte hearing upon a bankruptcy

petition filed by tbe firm of his son-in-law and that he refused to dismiss the case when the defendant appeared in court and offered to pay the claims in full or give bond to secure them, and also proved beyond all possibility of doubt that the claims were spurious and insufficient to sustain the case. The evidence further shows that this company resisted bankruptcy and asked for a jury trial. There is also testimony to the effect that Judge Speer's actions in dismissing the receiver appointed without notice may have been due to the investigation of his conduct, which had been instituted at that time. No judge possessing a fine sense of judicial ethics would have permitted himself to be placed in the doubtful position in which Judge Speer willingly allowed himself to be placed in the foregoing cases. His conduct shows a woeful lack of appreciation of his judicial position.

ALLEGED OPPRESSIVE AND CORRUPT CONDUCT IN ALLOWING THE DISSIPATION OF ASSETS OF BANKRUPTCY ESTATES BY THE UNNECESSARY EMPLOYMENT OF FAVORITES, RELATIVES, ETC.

TESTIMONY OF MR. GEORGE F. WHITE, UNITED STATES MARSHAL.

(Pages 1401–1425.)

On this subject Mr. White testified that he had received a fee of $800 as receiver in the A. D. Oliver bankrupt case, in addition to expenses, and also stated that he had received similar appointments in a good many other cases, naming the Electric Supply Co. case, in which he had received $800, the Perkins Manufacturing Co. case, in which he received $800, the Daniels Co. case, in which he received $1,000 as receiver. He also testified that in the Electric Supply Co. case and the Daniels Co. case, the firm of Talley & Heyward had been employed as attorneys for receiver. Mr. White could give no special reason for sending 200 miles for an attorney to represent him. He also stated that in the Electric Supply Co. case the attorneys employed by him, Akerman & Akerman, and Talley & Heyward, were paid $2,250. He stated that the firm of Talley & Heyward received a fee of $375 in the Daniels case. Mr. White testified further that during the time he was receiving these fees in bankruptcy cases he was drawing his salary as marshal, amounting to $3,500 per annum; that the fees received from these appointments in bankruptcy cases averaged about $1,000 per year.

Attention is invited to the list of fees paid Mr. White on account of the appointments as custodian and receiver, showing that Mr. White received during his service as marshal fees amounting to over $10,267.64, the list not being complete. Mr. White is one of the intimate friends of Judge Speer and has testified in his favor in this investigation. The appointment of the marshal to such positions and the payment to him of large fees is quite unusual, as it is customary in other judicial districts for the marshal when directed to take charge of property to hold it in his official capacity and receive for such services only the fees and expenses allowed by law, which are turned over to the Government as part of the earnings of his office. It is noted that in a large proportion of the cases where Mr. White was appointed receiver he employed the firm of the judge's

son-in-law to represent him as attorneys, and that they also received large fees in such instances. The incomplete list of cases mentioned follows:

List of cases in which George F. White was appointed receiver and allowed fees.

Title of case.	
Brunswick Shingle Co	$200.00
Erie Lumber Company	300.00
H. F. Beckum	100.00
J. M. Buckelew	75.00
Corbett Brothers	75.00
Julius Ohlman	200.00
W. A. Yawn	75.00
Abbeville Mercantile Co	200.00
Beddingfield Mercantile Co	150.00
R. B. Perry	125.00
M. Williams	150.00
J. J. Park	250.00
B. Orovitz	100.00
C. H. Harper	125.00
Tom Buckings	25.00
W. L. Cook	25.00
J. J. Toole	100.00
J. W. Webb	10.00
C. A. Harrison	125.00
D. L. Ragan	16.50
Sam Karlowitz	125.00
R. M. Denard	100.00
George Fish-Fish & Alex Fish-Fish	250.00
J. A. Curl	75.00
E. B. Harris	535.00
F. M. Barfield	32.00
R. L. Cheek	176.00
McIntyre Kaolin Co. (Not yet allowed.)	
Union Dry Goods Co	95.00
O. Jarmulowsky. (Not yet allowed.)	
De Lamar Turner	125.00
T. A. Scott	750.00
Massengale Co	125.00
J. R. Crandall	134.42
Perkins Manufacturing Co	870.00
Perkins Logging Co. (Not yet allowed.)	
T. Z. & P. V. Daniels Co	1,000.00
Electric Supply Co	850.00
J. E. Thompson & Brother	99.14
Rouse & Williams	500.00
W. W. Jackson	150.00
H. Jones	150.00
Funston Supply Company	250.00
Eatman Hardware Company	250.00
Mize & Oliver	800.00
Turner Folsom	100.00
Chas. Brigham	300.00
E. L. Moore	(?)
	10,267.64

ALLEGED EXTRAVAGANT ADMINISTRATION OF ESTATES, FEES TO SON-IN-LAW AND FAVORITES.

TESTIMONY OF MR. BOLLING WHITFIELD.

(Pages 2019–2037.)

Mr. Whitfield testified he was an attorney by profession and had practiced in the southern district of Georgia for 25 years; that he was acquainted with Mr. M. A. Baker, and had assisted him in preparing an affidavit for use in this investigation; that he knew Mr. A. H. Heyward was appointed receiver in the M. A. Baker case, although he resided at Macon, 191 miles distant from Brunswick, where the Baker estate was located; that he knew Mr. Heyward was also appointed receiver in the case of Joseph Champaign, the estate in that case being located on St. Simons Island, some 200 miles from Macon, the home of Mr. Heyward.

Mr. Whitfield testified further that about the time the partnership was formed between Max Isaacs and Mr. A. H. Heyward, Mr. Isaacs had been appointed attorney for the referee in the Millen Grocery Co. case. That shortly after the formation of the partnership mentioned efforts were made by this firm to institute bankruptcy proceedings against several of the large concerns in the vicinity of Brunswick (the home of Mr. Isaacs), namely, the Beach Manufacturing Co., the L. Carter Co., and the Gray Lumber Co. He also stated this firm filed a petition against the Yaryan Naval Stores Co.

In answer to questions Mr. Whitfield stated that after the formation of the partnership of Isaacs & Heyward a general feeling of insecurity on the part of the large business interests was expressed throughout his section of the State; that Mr. Isaacs had resigned as referee in bankruptcy cases and was very active in making up applications for bankruptcy cases.

TESTIMONY OF MR. L. M. BAKER.

(Pages 1998–2013.)

Mr. Baker stated that he was a merchant residing at Brunswick, Ga., and that his business had been put into bankruptcy during January, 1909. That the referee, Max Isaacs, immediately appointed Mr. Heyward, Judge Speer's son-in-law, receiver, although Mr. Heyward lived at Macon, about 180 miles distant from Brunswick; that the proceedings were brought on Saturday about 11 o'clock and that Mr. Heyward was in Brunswick on Sunday morning at 9 o'clock with the papers in the case, took charge of the property, and left Brunswick on the train Sunday night for Pensacola, Fla., where part of the property was located; that he stayed there Monday, returned to Brunswick on Tuesday, stayed there about a day, and instructed Mr. Baker to continue in the collection of the revenue from his property and deposit the money in the bank, and forward the deposit slips to him (Heyward) at Macon. That Mr. Heyward was later elected trustee in the estate and held it as receiver and trustee not longer than two months. Mr. Baker then produced a statement of the expenses in this case showing the payment of a total of $4,090, among the items being $1,000 paid to Mr. Heyward as receiver and $266.21

as trustee. For list of disbursements in this case see Record, page 2004.

It will be noted that the undisputed evidence on this subject shows that Mr. Heyward, residing at Macon, was appointed receiver for the M. A. Baker Co., located at Brunswick, Ga., some 200 miles distant from Macon, by the referee, Mr. Isaacs, and that he received a fee of $1,000 from the estate for a few days' work.

TESTIMONY OF MR. JESSE C. HART.

(Pages 872–888.)

Mr. Hart testified that he resided in Macon, and was a banker by occupation; that he was connected with the Macon National Bank, and that he had employed Mr. Heyward to have the bank designated a depository for bankruptcy funds. In answer to questions, Mr. Hart testified that Mr. Heyward was his personal friend and also a son-in-law of Judge Speer; that he was not conscious of having employed Mr. Heyward to do this work on account of his relationship to Judge Speer, but added, "It may have passed from my mind; I don't remember."

Upon cross-examination statements were drawn from Mr. Hart by counsel for Judge Speer to the effect that he had never heard anything detrimental to Mr. Heyward's character.

TESTIMONY OF MR. J. T. HILL.

(Pages 823–832.)

Mr. Hill testified that he had been employed by the Exchange Bank of Cordele to secure the designation of that bank as a bankruptcy depository through the influence of Mr. J. N. Talley with Judge Speer and that the bank had to pay Mr. Talley for the services through him (Hill). On cross-examination Mr. Hill stated that he did not make any personal effort to have the bank mentioned made a depository because he did not think he could accomplish it, and that he had made a contract with Mr. Talley for the matter in advance of the application to the judge. In response to the question as to whether he had ever made application to Judge Speer for the designation of a bank unsuccessfully, Mr. Hill stated that he had not, but that they (meaning the attorneys of his town) had made an organized effort to get a referee in bankruptcy appointed in his county, which had failed, and that it was understood it would take fees to get it. In answer to a question from Judge Speer's attorney as to the grounds for his understanding that it was necessary to approach the judge on such subjects in an unusual manner, Mr. Hill replied that it was the general understanding that it was necessary to do such things in a delicate way through those who are close to the judge, and that he understood that the influence enjoyed by Mr. Talley was due to the fact that he was a former stenographer of the judge and at the time a law partner of Mr. Heyward, a son-in law of the judge; further, that the matter of the designation of the bank in question was not taken up with Mr. Talley, owing to his familiarity with such things, as any competent attorney could have prepared such a formal application.

TESTIMONY OF MR. W. C. SNODGRASS.

(Pages 2189–2198.)

On the subject of the influence of Judge Speer with the referees in having the firm of his son-in-law receive appointment, etc., Mr. W. C. Snodgrass testified that Mr. W. C. Lane, former referee in bankruptcy, told him that when Judge Speer appointed him (Lane) referee, he gave him to understand that the appointment of the firm of his son-in-law would be very acceptable in cases that bore remuneration. Upon cross-examination Mr. Snodgrass stated that he had associated the firm of Talley & Heyward with himself in the Philip Orth case, because the referee, Mr. Lane, had told him it was the proper thing to do.

TESTIMONY OF HON. THOS. S. FELDER.

(Pages 1901–1952.)

Mr. Felder, attorney of the State of Georgia, testified that there is no question but that the funds of bankruptcy estates are wasted and that in the administration of these estates only certain favored ones are selected to receive the benefits; that all kinds of officers are appointed and paid large fees. That it does not make much difference where the property is located or what the character of the property is, if the estate is of any importance, where big fees are likely to be allowed, the favorites of Judge Speer are appointed to the positions regardless of their fitness. That no suggestions or agreements of counsel with regard to these appointments are taken, but that the appointments go to certain favored parties. That when he came to the bar at Macon that was the first thing he heard with reference to the court; that the most distinguished lawyers never dare to try important cases in Judge Speer's court unless they associate someone with them that can reach the ear of the judge; that so far as he is concerned he had some time ago reached the conclusion that he could not do justice to himself as a gentleman without telling prospective clients that his relations with the court would make it detrimental for them to employ him; that it was so well known in the district that Judge Speer was going to take sides in a case that the attorneys learned to watch his countenance and soon knew whether they were going to win or lose. That a lawyer who is a gentleman can not prosecute a case in the court whether he wins or loses without feeling that justice has not been done; that it does not look as if justice has any part in the comedy; that truth is not being looked for; that the surroundings are merely for the purpose of displaying the court, and that the attorneys are all merely king's jesters; that the people all know as well as the lawyers that when they go into court with a lawyer who is favored by the judge they are thrice armed. That the people are in terror, not the evildoers alone, but all who find it necessary to go into court even in civil cases where the rights of property are to be passed upon and estates to be administered.

Mr. Felder further stated that he would say "most unequivocally that the administration of justice in Judge Speer's court is unsatis-

factory and that it is a wonder the people have suffered so long," that it gives him no pleasure to make this statement, but that he does it in justice to the people of Georgia.

THE A. D. OLIVER BANKRUPT CASE—TESTIMONY OF W. C. SNODGRASS.

(Pages 2155–2189.)

Mr. Snodgrass testified that he handled most of the litigation in this case, and that out of $8,305 realized, there remained only $108.09 on hand, all of the balance having been paid in fees and expenses. Mr. Snodgrass then gave the circumstances relative to this case (Record, p. 2156). He stated in response to question, that this case was mighty near like a race for fees on the part of the attorneys and officials, and that finally it became just a question of fees; that the firm of Talley & Heyward received, in connection with Hawes & Pottle, $2,000 as attorneys for trustee in one branch of the case, and "I would like mightily to do the same thing for the same money; I would have taken the $2,000, however, if it had been allowed me." Mr. Snodgrass was asked if in his judgment these attorneys did not honestly and truly earn the amount allowed in the case, and said, "Honestly and truly, to come clean about it, I do not." Mr. Snodgrass testified further, that he was informed by the referee in this case that the trustee had made application to the judge for the employment of counsel and asked that Talley & Heyward be designated.

Mr. Snodgrass testified on cross-examination that the receiver appointed in the case, George F. White, received a fee of $800, and that he (Snodgrass) was employed as attorney for receiver and was paid a fee of $375. Mr. Snodgrass testified further, that the location of this bankruptcy estate was at Climax, Ga., about 200 miles from Macon, and that the trustee in the case evidently went to Macon to employ the firm of Talley & Heyward in order that fee allowances might be satisfactory, and other arrangements agreeable to the court; that this is what the lawyers generally supposed was the reason.

PARTNERSHIP OF A. H. HEYWARD AND MAX ISAACS—TESTIMONY OF MR. W. W. OSBORNE.

(Pages 2436–2437.)

Mr. Osborne testified that about the time the partnership of Isaacs & Heyward was formed he had been trying cases in the Federal court at Savannah, and had noticed Mr. Heyward and Mr. Isaacs about the court room frequently; that Mr. Heyward sat in court with Judge Speer and conversed with him while cases were being tried, and that he also saw Mr. Isaacs and Judge Speer in the evening walking up and down in front of the De Soto Hotel; that he passed them engaged in conversation at 9 o'clock in the evening, and at 11 o'clock again passed the hotel and saw the judge and Mr. Isaacs still in conversation on the hotel veranda; that the second night after that he again passed the hotel and saw Judge Speer and Mr. Isaacs talking together; that Mr. Isaacs had just previous to this time resigned his position as referee in bankruptcy, and the announcement of the partnership of Isaacs & Heyward was made within a few days.

TESTIMONY OF A. A. LAWRENCE.

(Pages 1490–1494.)

Mr. Lawrence testified that at the time the partnership mentioned was announced, three things happened contemporaneously, namely, the resignation of Isaacs as referee in bankruptcy; the retaining of Isaacs as attorney for receiver in the Daniels bankrupt case, and the formation of the partnership; that the Daniels Co. was located at Millen, Ga., a town 170 miles distant from Brunswick, the home of Mr. Isaacs; that court was in session at Savannah at the time and that Judge Speer made a long talk in accepting Mr. Isaacs's resignation as referee, and referred to his valuable and magnificent services, etc., and that it was immediately predicted by two of his friends that in a few days the partnership between Isaacs and Heyward would be announced.

Mr. Lawrence then identified three exhibits, namely, "GG," "Y," and "Z," representing statements made by him in the investigation and testified that the statements made in them were true.

TESTIMONY OF ALEXANDER AKERMAN, UNITED STATES ATTORNEY.

(Pages 2440–2449.)

Upon being questioned relative to the formation of the partnership of Isaacs and Heyward, Mr. Akerman stated that in the latter part of February, 1913, he had been in New Orleans appearing before the Circuit Court of Appeals, and that on his way home, while on the train on the return trip he noticed in a Savannah paper that Max Isaacs had resigned as referee in bankruptcy, and expected to engage in the practice of law and make a specialty of bankruptcy cases, and that he already had one very large case, naming the Millen Grocery Co.; that while on the train he engaged in conversation with Judge Joseph W. Bennett, of Brunswick, and that they predicted there would be a partnership between Isaacs and Heyward. That Mr. George F. White, who had been appointed receiver by Judge Speer in the Millen Grocery Co. case employed Max Isaacs as his attorney, although he had previously tentatively employed Mr. Akerman in that capacity. That Mr. White told him in explanation of his action in breaking his agreement, "Alex, you know me well enough to know that I couldn't help myself," and Mr. Akerman infers, of course, that Mr. White took this action through the influence of Judge Speer. Mr. Akerman proceeded to testify as to the intimate relations between Judge Speer and Mr. White, and stated further in explanation of the action of Mr. White in employing Mr. Isaacs as attorney in the Millen Grocery Co. case, that the partnership of Isaacs with Judge Speer's son-in-law was formed almost immediately thereafter. That he saw Mr. Isaacs in conference with Judge Speer at the De Soto Hotel at about the time the partnership was formed.

AFFIDAVIT OF SIMON N. GAZAN IN RE CONNECTION OF JUDGE SPEER WITH ISAACS & HEYWARD PARTNERSHIP.

Mr. Gazan has furnished an affidavit on this subject which marked Exhibit No. 16. Mr. Gazan swears that about the time the part-

nership was formed between Mr. Max Isaacs and Mr. A. H. Heyward, Judge Speer's son-in-law, he went to the De Soto Hotel in Savannah, Ga., at which place all the attorneys mentioned were stopping at the time, and that he saw Judge Speer, Mr. Isaacs, and Mr. Heyward in conversation one evening at about 8.30 p. m. in a room at the hotel, and that on the next day he met the same three persons on the street and was informed by them that Mr. Heyward and Mr. Isaacs had formed a copartnership for the practice of law. That he congratulated these gentlemen and invited them to have a drink with him, which invitation was accepted, and they proceeded to a nearby club for the drink. This affidavit corroborates the testimony of a number of other witnesses to the effect that Judge Speer was in frequent conversation with these parties at the time the partnership was formed, and this fact is undoubtedly the cause of the general impression which became current to the effect that Judge Speer was a party to the transaction.

The firm of Talley & Heyward was dissolved on January 1, 1913, and in March, 1913, the firm of Isaacs & Heyward was formed. It is noted that Mr. Lawrence, Mr. Osborne, and Mr. Akerman testify as to the conferences between Judge Speer and Mr. Heyward and Mr. Isaacs at about the time the partnership mentioned was formed, and it is apparent that Judge Speer was considerably concerned in this partnership, although he denies that he had any connection with it except that the young men consulted him. Attention is invited on this subject to the affidavit of Mr. Samuel S. Bennett (Exhibit No. 16–A) in which Mr. Bennett swears that Judge Speer proposed a partnership between Mr. Bennett and his son-in-law, Mr. Heyward, which proposition was declined by Mr. Bennett. Attention is also invited to the statements of some of the witnesses to the effect that shortly after the formation of the partnership of Isaacs & Heyward and the institution of bankruptcy cases against several important business concerns, the names of Judge Speer, Isaacs, and Heyward were linked together.

There is little doubt but that Judge Speer was a party to the formation of the partnership between Isaacs and his son-in-law, although he states he had nothing to do with it. He admits, however, that the young men may have consulted him.

It is also true that Judge Speer proposed a partnership with Heyward to Mr. Samuel Bennett, although stated he could not remember it when questioned on the stand by the chairman of the committee.

TESTIMONY OF HON. JACOB GAZAN.

(Pages 2396–2398.)

Mr. Gazan testified that the commercial interests in his section of the State regard Judge Speer's court as a constant menace; that since the formation of the partnership of Isaacs & Heyward, Speer, Heyward and Isaacs are called the "unholy triple alliance"; that the air is full of rumors that this or that concern was next in order for attack, and that even before these big companies were attacked by this firm the "grapevine telegraph" had advised the world that it was coming. Mr. Gazan then identified a paper marked "Exhibit S" and made oath to the statement contained in it.

TESTIMONY OF MR. R. L. BENNETT.

(Pages 2418–2424.)

Mr. Bennett testified that the people generally feel that they can get no justice in Judge Speer's court, and that he has not found any man in his section who is not afraid to enter Judge Speer's court, and that they will submit to any compromise and will not go into his court unless compelled. Mr. Bennett also testified that immediately upon the formation of the partnership of Isaacs & Heyward, the impression went abroad that it was formed for the purpose of bankrupting business interests, and the names of large concerns marked for attack were mentioned, and these firms were actually thrown into bankruptcy very soon thereafter.

On cross-examination Mr. Bennett testified that Mr. Isaacs was indicted in Wayne and Appling Counties for barratry and was charged with soliciting business in bankruptcy cases.

TESTIMONY OF JOHN W. BENNETT.

(Page 2435.)

Mr. Bennett testified that the commercial interests of his section of the State feel that Judge Speer is a menace to justice, and that the people generally feel that cases are tried in his court by a kind of "sleight-of-hand performance that nobody ever sees." That the court is not referred to as the United States court, but as "Judge Speer's court"; that occasionally you find a person through the country who has been a juror who feels kindly toward Judge Speer, as he is very kind to his jurors.

It appears to be a fact that Mr. Isaacs, who formed the partnership with the judge's son-in-law, and thereafter immediately began soliciting claims and instituting bankruptcy cases against large business concerns, has been indicted in two, if not three, counties in Southern Georgia, for barratry. It is noted also that since the notoriety caused by the actions of this firm, and the indictments mentioned, the partnership has been dissolved.

There is no doubt but that the formation of this partnership, and the actions of Judge Speer in presiding in cases where the members were involved, appointing receivers without notice and without cause at their instance, as well as in deciding questions in their favor, served to bring the United States Court into disrepute and place the judge thereof under general suspicion.

ALLEGED ABUSE OF HIS OFFICIAL AUTHORITY IN USING COURT OFFICIALS AS PRIVATE SERVANTS.

TESTIMONY OF MR. H. G. TUCKER.

(Pages 537–548.)

Mr. Tucker testified that he had seen Mulholland at Judge Speer's house while he was employed as crier of the court. He stated that he had never seen Mulholland open court. Mr. Tucker testified further that Mulholland had been employed as crier for a year or probably more, and was paid by the Government during that time.

In response to a question as to the services rendered to the court Mr. Tucker stated Mulholland had never acted as crier, but that he had seen him around the judge's chambers and about the building a good deal, but he could not recall what he was doing. He also testified that he visited Judge Speer's house probably once a week, and upon being asked as to whether he saw Mulholland as a personal servant around the house, Mr. Tucker replied, "Yes, sir; I saw him around the house." In answer to the question as to whether Mulholland worked at Judge Speer's home when he was not on the roll of the United States Court as crier, Mr. Tucker replied that he was satisfied that he did, because he would go away with the judge in the summer time. On cross-examination Mr. Tucker replied that the salaries of bailiffs and criers are paid by the marshal's office, and that the marshal's office has to certify to them, and that it was the marshal's (Mr. White's) purpose to have these officers report at the office each day for which they claimed pay. That it was the rule for Mr. White to have charge of the bailiffs, and that at the end of the week, he (Tucker) would pay them at Mr. White's direction.

Upon being recalled (pp. 617–620) Mr. Tucker was presented with a paper by Mr. Howard, Judge Speer's attorney, and identified it as a receipt from Charles Mulholland, stating that the body of the receipt appeared to be written by Mr. J. C. Morecock, who was formerly stenographer to Judge Speer.

THE TESTIMONY OF MR. JOHN M. BARNES, FORMER UNITED STATES MARSHAL.

(Pages 916–918.)

On this subject Mr. Barnes testified that Judge Speer used the court crier or court messenger as coachmen, and that neither the crier not the messenger ever came about the court to discharge the duties for which the Govermment paid them, except occasionally, and on the first of each month to get their pay from the United States. That in the winter of 1902–3, the judge had a colored man named Cleveland as messenger, and wished to appoint a colored man named W. Mitchell as crier; that he called Mr. Barnes to his office and asked him if he would do him the kindness to act as crier if he appointed Mitchell; that the judge said Mitchell could not discharge the duties of crier but that the judge desired to have both Cleveland and Mitchell at his residence outside the city limits, and would be greatly obliged if Mr. Barnes would act as crier; that he (Barnes) consented, and discharged the crier's duties for perhaps six months, although the said crier Mitchell regularly drew the pay of crier. That during the time that Mr. Lamar was marshal and custodian of the Federal Court Building, one Henry M. Allen, colored, was employed as janitor, but was required by Judge Speer to leave the Federal Building at 9.30 a. m. each day and repair to the judge's residence thereafter to act as man of all work the rest of the day; that Allen finally objected, especially as he had much trouble with the judge's pack of dogs, which had the mange, Allen being required to wash them; that Allen, however, finally agreed to continue this service at the judge's residence if the judge would pay him something in addition to his salary as janitor; that the judge refused, and that the custodian then asked

for Allen's resignation; that Allen inquired as to the cause for his dismissal and was told that he had offended Judge Speer, whereupon he got out circulars detailing the facts and circulated them on the streets; that in 1904 the report was circulated that an effort would be made to impeach Judge Speer, and that Allen was recalled and given employment about the Federal Building as bootblack, etc., but was said to be paid as bailiff.

While Mr. Barnes was on the stand, counsel for Judge Speer produced and read into the record correspondence between Judge Speer and the United States marshal, which they claim shows that Mr. Barnes's statement relative to the dismissal of the janitor, Allen, and his employment at the residence of Judge Speer were untrue. On cross-examination Mr. Barnes testified (pp. 949–973) that he did not know what particular service the court officials mentioned by him performed at the judge's house, but they seemed to be serving the judge in some capacity, as they always came to him and stated that the judge wanted them out to his house.

TESTIMONY OF MR. ALEXANDER AKERMAN, UNITED STATES ATTORNEY.

(Pages 1094–1095.)

Mr. Akerman stated that the judge had used bailiffs, messengers, and criers as personal servants at his house most of the time, and that these men performed little if any official duties at the Federal Building. He referred to Mr. Mell McCoy, stating that he had been employed as crier, messenger, and bailiff for some time, and that until Mr. Lewis came to Macon to make his investigation McCoy had never discharged any duties except as personal servant to the judge and looking after his horses, etc.; that the judge has the appointment of a messenger and crier, and changes them so often that it is difficult to tell in what capacity a man is employed without going to the records; that Edward Mathis, although employed as court official, never discharged any duties whatever around the courthouse, and that the only duties he ever saw McCoy perform were those of personal servant to the judge.

TESTIMONY OF MR. GEORGE F. WHITE.

(Pages 1393–1401.)

Mr. White testified that the pay rolls for bailiffs, criers, and court messengers were made up in the office of the marshal and certified to there. Upon being asked whether he ever kept anyone on the pay roll who did not attend court every day, Mr. White replied, "My orders on that have been very strict, that they could not be paid for any day they did not come to the courthouse." Mr. White further testified that Mell McCoy, present court messenger, stays at Judge Speer's house, and he stated also that the judge pays a crier for personal services rendered "between $25 and $30 per month and his clothes." He also stated that Judge Speer employs three servants at his house independently of the court officers. In answer to questions as to whether the bailiffs and crier would simply go to the courthouse in the morning and immediately retire to Judge Speer's home and there act as personal servants to the judge and his family, Mr. White stated,

"They would come to the courthouse, and if there was anything I wanted done they did it," and upon being further questioned stated, "Sometimes they would go back to the judge's house," and on being still further questioned stated that he knew that the bailiffs and crier have assisted Judge Speer at his house. He further said, in answer to questions as to whether he had not had bailiffs and criers on the pay roll whose chief work and duty was as personal servants to Judge Speer at his home, "I have had bailiffs who did help Judge Speer at the house." Mr. White also stated that these officials waited on the judge and went with him to hold his horses, cared for the horses, etc., and stated as a general proposition one of the bailiffs stayed at the judge's house a good deal of the time in addition to the messenger and also said, "I have sent a messenger to wait on him in a personal way, also a bailiff and crier."

The testimony on this subject shows that Judge Speer has used the court messenger and ordinarily either a court crier or bailiff at his house as private servants while these parties were being paid by the Government. The testimony of Mr. Barnes, the former United States marshal, and Mr. Alexander Akerman, the present United States attorney, appears to show that the principal duties of these employees were in acting as private servants at the home of Judge Speer. Judge Speer claims that the personal services rendered by these parties were paid for by him.

See "Exhibit No. 10."

DECIDING CASES IN FAVOR OF RELATIVES, FAVORITES, ETC.

E. B. HARRIS BANKRUPTCY CASE—TESTIMONY OF MR. E. B. HARRIS.

(Pages 1003–1053.)

Mr. Harris gave his residence as Macon, and stated that he was a merchant and had been in the shoe business in that city for 18 years. That about 1906 he entered into negotiations with one J. Clay Murphy, acting for C. S. Henry of New York City for the sale of his store building for $36,000, and accepted $250 as part payment; that he gave a receipt and signed an agreement, but that Henry did not fulfill said agreement, and that he refused to convey the property; that Mr. Murphy then, on behalf of Henry, sued for specific performance of the contract, and lost in the State court, later entered suit for specific performance in the United States court; that Henry sold his right in the contract to one Joseph N. Neil for $1,000, who in turn sold his rights in it to Mr. J. Clay Murphy; that when the case came up in the United States court Murphy was represented by W. D. McNeil, a relative of Judge Speer; that Judge Speer referred the case to Mr. J. N. Talley, a law partner of Mr. Heyward, Judge Speer's son-in-law, as master; that the master (Talley) found in favor of Murphy; that is, for specific performance of the contract, but before the matter had been passed upon by the court a bankruptcy petition was filed against him (Harris) March 27, 1911, by A. L. Dasher, acting as attorney for creditors; that his store was closed, and shortly thereafter he effected an agreement for a compromise settlement of 21 per cent, all the creditors agreeing in writing to accept; that shortly thereafter Mr. Dasher and Mr. McNeil withdrew their clients' accept-

ances. That in June, 1911, Judge Speer appointed George F. White, United States marshal, receiver in the case, who employed W. D. McNeil, the kinsman of Judge Speer, as his attorney; that notwithstanding the opposition of Dasher and McNeil he secured the written consent of 96 per cent of his creditors to a compromise settlement of 21 per cent, and presented the matter to the referee, who certified it to the judge without recommendation; that Judge Speer refused to approve the composition, and that the matter proceeded and he was adjudged bankrupt, and Mr. Cook Clayton was elected trustee, Mr. Alexander Akerman and Arthur L. Dasher, jr., being named as attorneys for trustee. That shortly thereafter an offer of composition settlement of 21 per cent was again made, 93 per cent of the creditors accepting the offer in writing.

That the judge again refused to allow the composition, and in his remarks on the subject stated that in view of the effect that it might have upon the morale of the mercantile world he could not in justice allow a man to "break full-handed." That at this time the trustee filed exceptions to the findings of the master with regard to specific performance of contract with Murphy, and Judge Speer appointed another attorney for the trustee, Mr. Macolm D. Jones, who was also attorney for the bankrupt. That Judge Speer about this time furnished an article to the Macon News for publication, in which he set forth an opinion as to the issue involved; that Mr. McNeil, acting for Mr. Murphy, filed an affidavit of prejudice against Judge Speer and endeavored to disqualify him. That Judge Speer decided that he was not disqualified, and ordered the attorneys to proceed. That the attorneys declined to proceed with the case, and Judge Speer thereupon dismissed it for want of prosecution; that these attorneys then appealed to the circuit court of appeals, which upheld Judge Speer with regard to his being qualified to act but reversed his action in dismissing the case and ordered him to proceed with it; that at this time Judge Speer added Judge Andrew J. Cobb to the retinue of attorneys for the trustee. That the case then proceeded and a settlement was finally effected by which the store property was to be sold and Mr. Murphy was to receive all realized from the sale over $57,000. That at the time this settlement was being discussed Mr. Malcolm Jones, who was the attorney for Harris, was asked by Judge Speer what he thought of it, and that Mr. Jones did not reply. That Judge Speer again asked him if he agreed to the settlement, but that Mr. Jones was not heard to reply. That since that time he (Harris) had been informed that a man sitting near Mr. Jones heard him say, "I suppose your judgment is good." That the judge then said: "Draw the decree, gentlemen." That at the sale the property was bid in by Mr. Murphy at $66,000, and that the next day the property was sold to the Citizens National Bank of Macon for $77,500. That the decree did not give the public a fair chance to bid, as Mr. Murphy was to get all over $57,000, which gave him a big advantage in the bidding. That McNeil, the kinsman of the judge, got into the case on an 85-cent claim, and was paid $550 as attorney for receiver, and that he (Harris) did not know what McNeil ever did as receiver's attorney, as he did not know of any litigation handled by him. That this fee was allowed him by the special master, Mr. Talley, who at the same time allowed himself $50 for allowing it. Mr. Harris then requested to be

allowed to give some circumstances of the case, which he stated showed a close corporation of interests, and proceeded to state that the judge had taken his attorney away from him by making him attorney for the trustee. Mr. Harris then read the following list, showing the close corporation of interests of Judge Speer and his court officials, friends, and relatives with the case:

1. Judge Speer.
2. Mr. Akerman, United States attorney (as attorney for trustee).
3. George F. White, United States marshal (receiver).
4. United States deputy marshal (acting receiver).
5. Cook Clayton, court crier (trustee).
6. J. N. Talley, partner of Judge Speer's son-in-law (special master).
7. W. D. McNeil, Judge Speer's kinsman (attorney for receiver).
8. A. L. Dasher, jr. (attorney for trustee and petitioning creditors).
9. Judge Andrew J. Cobb, personal counsel for Judge Speer (attorney for trustee).
10. Malcolm D. Jones (attorney for trustee, also attorney for bankrupt).

Mr. Harris continued that he considered the appointment of Mr. Jones improper, as it made his interests conflict. Mr. Harris made complaint further with regard to the statement made by Judge Speer from the bench relative to him to the effect that he could not allow a man to "break full-handed" and stated that no fraud had been alleged and that his previous record showed that he had paid creditors 100 cents on the dollar after they had agreed to accept 50 per cent and give receipts in full. He testified further that the action of Judge Speer in declining to allow composition settlements when practically all the creditors agreed to them in writing was improper. Also, that he could not understand why the trustee, who was an experienced man in bankruptcy cases, should have had four attorneys to represent him. In answer to questions Mr. Harris testified that these four attorneys, namely, A. L. Dasher, Alexander Akerman, Malcolm Jones, and Andrew J. Cobb, had been paid fees amounting to $5,450. Mr. Harris then identified the statement given to Examiner Lewis, and it was read into the record. This statement sets forth most of the facts testified to by Mr. Harris. It states further that Judge Andrew J. Cobb, who was appointed by Judge Speer as one of the four attorneys for trustee, had previously represented Judge Speer in litigation in the State court without compensation. Also, that Mr. Malcolm Jones, who was his attorney, had stated to him that he did not consent to the settlement effected, which was alleged by Mr. Harris to have been coerced by the court.

Mr. Harris further testified that his total assets at the time the bankruptcy case was instituted amounted to $87,750, valuing the building at $77,500, at which price it was finally sold, and that his debts, secured and unsecured, amounted to approximately $76,000. Mr. Harris stated further that while A. L. Dasher, jr. and sr., are mentioned in the case, he does not think that A. L. Dasher, sr., was in the case; that A. L. Dasher, jr. and sr., were paid out of the case $2,750; Miller & Jones, as attorneys for bankrupt, $1,200; M. D. Jones (who is the Jones of Miller & Jones), as attorney for trustee, $600; Andrew J. Cobb, as attorney for trustee, $400; Alexander Akerman, as attorney for trustee, $500; W. D. McNeil, as attorney for receiver, $550. Mr. Harris testified further that he

had made a contract with Messrs. Miller & Jones to represent him for $500, but that the master allowed them $1,200 for doing this very work. Mr. Harris then read into the record an extract from a letter written by the Mr. Dasher mentioned above to the effect that his store building was sold at the exceptionally low price due to the fact that the parties holding the lien had a decided advantage over all other bidders, and that the court ordered the case settled in the manner mentioned.

TESTIMONY OF MR. ALEXANDER AKERMAN.

(Pages 1096–1104.)

Mr. Akerman detailed his connection with this case and stated that when the proposition of settlement, out of which arose the affidavit of prejudice mentioned in this case, was made to him he presented it to Judge Speer for permission to submit it to the creditors, and that Judge Speer said such matters should not be turned into a town meeting, but should be decided judicially; that he cited the law and authorities to the judge showing that such questions of settlement should be presented to creditors for consideration, but that he was convinced the judge would not allow the matter to take that course, and so informed Mr. McNeil, who was representing the parties making the proposition of settlement; that Mr. McNeil on hearing this immediately withdrew his proposition of settlement, giving as his reason that he did not wish the judge to file any opinion which would prejudge the case; that the next day the opinion which is mentioned in the testimony of Mr. Simmons appeared in the Macon News, and that Mr. McNeil promptly filed an affidavit of disqualification; that the judge refused to disqualify himself and peremptorily set the case down for hearing. Mr. Akerman then proceeded to testify that Judge Speer had delivered an opinion in the case reported in the One hundred and ninety-first Federal Reporter, page 808, which was an unfair reflection upon his integrity, and read into the record as follows: "That was the phase which was presented to the court when Mr. Akerman made this motion to call a meeting of creditors, to part with their rights, perhaps, for the sum of $4,000. The court very well knew all the creditors were in the dark as to their rights. It prepared an opinion which might have enlightened them. Then, upon the application of counsel who desires to secure this property for his clients, the offer was withdrawn. The attorney, W. D. McNeil, according to his own testimony under oath in this hearing, stated to the judge at the time he withdrew the offer that it was done to prevent the publication of the opinion. The judge thought about that. Was there any significance to be attached to it? What did counsel have in mind? Did he desire to deprive the profession and the public of a lucid opinion setting forth the law upon this important topic? Assuredly not; a member of the bar would not be so unkind to the public and the court. What, then, was his motive? The court could see no other, except that, perhaps, there might be some facts in the case which, while these negotiations were pending, he did not wish the creditors to be apprised of." Mr. Akerman stated that this was a very unfair reflection, as his only action was to present a motion for submitting the matter to a public

meeting of the creditors, while Judge Speer stated in his published opinion that there was an attempt to cover up something from the creditors.

The records in this case show that when the attorneys presented to Judge Speer the request for submitting to the creditors a proposition of settlement and later withdrew the petition without any hearing on it, the judge prepared and furnished the Macon News for publication a long opinion in which he set forth his views on the case in full before the issues involved had been presented to him for adjudication, and that the attorney for the plaintiff promptly filed an affidavit of disqualification under section 21 of the Judicial Code, alleging bias and prejudice on the part of Judge Speer, and the judge refused to disqualify himself upon the technical ground that the word "personal" had been omitted from the affidavit of prejudice. The attorneys declined to proceed with the case after the judge decided he was not disqualified, and the judge thereupon dismissed the case for want of prosecution. Appeal was taken from the judge's decision and the Court of Appeals ordered him to proceed with the case. The record further shows that when this appeal was taken from his decision Judge Speer brought Judge Andrew J. Cobb into the case and appointed him attorney for the trustee, the trustee already having three firms of attorneys representing him. It further appears that Judge Cobb was paid $400 for these services, and Judge Cobb has testified that he had previously represented Judge Speer in private litigation gratuitously. The record also shows that Judge Speer authorized the employment of four attorneys for the trustee in this case, and that they were paid $5,450 out of this estate. Attention is also called to the fact that nearly all of the other large fees allowed were paid to Judge Speer's relatives and favorites. The records show that Judge Speer made an order for the sale of the store property of Mr. Harris by which all sums in excess of $57,000 received should be paid to the plaintiff (Murphy), and it is evident that an order of this character gave Mr. Murphy such an advantage in the sale that no parties desiring to purchase it could afford to bid against him, as he would be the beneficiary in all of the excess received. It is also noted that the property in question was ostensibly bid in by Mr. Murphy at $66,000, but that in reality he had an agreement with the Citizens National Bank, and that the property was actually resold to them the following day for $77,500. This transaction, of course, resulted in Mr. Murphy receiving $20,000 for a claim which had been sold a short time previously for $1,000. There is no direct evidence implicating Judge Speer in this transaction beyond his conduct in making the order, and the testimony of Mr. Harris that his attorney was coerced into agreeing to the sale.

Judge Speer denies that he did anything improper in this case.

There will be found in evidence and marked "Exhibit 19" a copy of the affidavit of prejudice filed in this case under the provisions of section 21 of the Judicial Code, and upon which Judge Speer declined to disqualify himself. There will also be found in evidence and marked "Exhibit 19–A" a copy of the affidavit made by Mr. T. J. Simmons, the managing editor of the Macon News, to the effect that Judge Speer furnished to his paper the opinion upon which the affidavit of prejudice was based and which was an alleged prejudging of the issues involved.

The opinion referred to in the affidavits is in evidence as Exhibit 19–B.

Mr. Akerman testified further (pp. 1198–1208) that the article sent by Judge Speer to the Macon News for publication was a prejudging of the merits of the controversy between Henry and Harris.

TESTIMONY OF W. C. SNODGRASS.

(Pages 706–720.)

In answer to the question as to the general reputation of Judge Speer as to fairness and judicial temperament Mr. Snodgrass stated that the general opinion was that Judge Speer is subject to prejudice and to take arbitrary action, and to insist on formulating records and procedure in such a way as to require counsel to accede to them against their protest and wishes; that the general desire of the people is to avoid the Federal court when they can, and that they do not wish to come into a court where there is so much talk about favoritism, prejudice, and arbitrary ruling; that there is much talk about Judge Speer being arbitrary, having favorites, and possessing prejudices; that this reputation is the general talk throughout the district. Mr. Snodgrass related an instance relative to the actions of Judge Speer in the case of the First National Bank of Thomasville *v.* Hopkins, trustee; that in this case $10,000 was involved and that the judge decided it on an oral opinion without a review of the record or an examination of the authorities cited; that when they undertook to argue it the judge did not listen to the argument, was restless, moved about, and paid about as much attention to the case as if it was a $5 justice court case; that the judge stated he did not care to examine the authorities cited; that he stated the case was so plain he did not care to take it under advisement at all; that appeal was taken to the court of appeals and Judge Speer promptly reversed; that the court of appeals examined the authorities submitted, and that at the argument of the case before the court of appeals the plaintiff's attorneys did not attempt to sustain the various actions of Judge Speer in the court, but based their argument on the maxim, "Though the coachman was drunk, the coach drove on to its destination." Mr. Snodgrass further testified that one of the attorneys for the plaintiff in this case in whose favor Judge Speer erroneously decided was Mr. O. A. Park, a friend of Judge Speer and one of his counsel in the investigation before the committee.

FRANK SCARBORO CASE—TESTIMONY OF ALEXANDER AKERMAN.

(Pages 1081–1089.)

Mr. Akerman testified that in April, 1912, shortly after he was appointed United States attorney, the case of United States *v.* Frank Scarboro, indicted for violation of the National Banking Act, came up for trial at the Albany division; that Messrs. Talley & Heyward were of counsel for the defendants in this case and that when the case had progressed for one short day, Judge Speer sent for him at 6.30 a. m. the following morning and stated that he had seen enough of the case to convince him that the defendant was clearly guilty; that as he was represented by numerous eminent attorneys he did not wish

to see a miscarriage of justice, and suggested that Mr. Akerman was overmatched in counsel and that it would be well for him to get authority from the department for the employment of assistant counsel to represent the Government; that he (Akerman) agreed to this and wired the department for authority, and when it was received he employed Messrs. Pope & Bennett; that the case then went on for several days, the Government continuing to pile up evidence, and the defense allowed it to go to the jury without submitting any defense whatever; that after the case was argued the judge, without the slightest intimation, "turned loose in a charge that was little short of directing a verdict of not guilty;" that the case went to the jury about 2 o'clock in the afternoon and the next he heard of it the jury sent for a copy of the judge's charge, and that later in the day when he was at the supper table at the hotel the marshal, Mr. George White, came over and asked if he would be satisfied with a mistrial, to which he replied that after that charge from the judge he would be satisfied with anything; that at about 8 o'clock he went back to his office and the jury was called in to court by the judge and a mistrial declared; that Mr. White afterwards told him that he had stated to the judge that the jury stood 8 to 4 or 10 to 2 for conviction, and the judge told him "Not to let them go back to deliberate, but to keep them walking until he could get back there and declare mistrial."

AFFIDAVIT OF HARRY BURNS.

(Pages 1249–1250.)

The affidavit of Harry Burns, dated June 6, 1913, relative to the conduct of Judge Speer in this case, was read into the record. Mr. Burns was acting as bailiff and, together with one Frank Riley, deputy marshal, had charge of the jury in the Scarboro case. Mr. Burns swears in this affidavit in substance as follows:

That after the jury had been deliberating for a long time the marshal, Mr. White, came to him and asked if there was any chance of arriving at a verdict, and upon learning that the majority was in favor of conviction the marshal went away, and shortly thereafter the deputy marshal and bailiff took the jury to supper; and Mr. Burns states that after the jury was through supper the marshal came to them and instructed them to keep the jury walking and not take them back to their room for further deliberation until specially instructed to do so. He states this instruction was followed and the jury kept walking for perhaps an hour, and when it was called in it was almost immediately taken into court and mistrial at once declared by the judge.

TESTIMONY OF GEORGE F. WHITE.

(Pages 1385–1393.)

Upon being sworn Mr. White testified that he had held the position of United States marshal for nine years and was on very intimate terms with Judge Speer. Mr. White denied that he had discussed the action of the jury in the Scarboro case with Judge Speer, but later stated that the only talk he had with the judge was at about half-past 4 o'clock in the afternoon of the day the jury was given the case, at

which time the judge came to the building and asked if the jury had agreed, and upon being told they had not, stated that he wished to go to ride and asked him (Mr. White) to go down and see if the jury was likely to agree any time soon; that if they would he would not go to ride; that he (White) went down to the jury room, but was told by the foreman that they had not agreed, and that there was no possibility of agreement; that he went back and informed the judge of this statement, who then went to ride. That before supper the judge told him to let the bailiff go, and to have the deputy marshal, Frank Riley, take the jury for a walk, and that was the last he saw of them until he went back to the courthouse at about 8 o'clock. Mr. White denied that he had been directed by the judge to keep the jury walking so that he could reach the courthouse and declare a mistrial. He also denied that he had stated to Mr. Akerman in the presence of Mr. Betjman that the judge had sent for him to ask how the jury stood or that he had made any statement to Mr. Akerman to the effect that the judge's conduct in the case was due to hostility to Mr. Akerman.

While the evidence on this subject is not uncontradicted it is thought the conflicting testimony of George F. White should be considered in connection with his intimate relations with Judge Speer, and the large number of favors enjoyed from the judge's appointments; the list of fees as receiver on appointments from Judge Speer appearing in another part of this report showing that Mr. White has received more than $10,000 in such fees during his service as United States marshal. It is noted also that Mr. D. C. Betjman corroborated all the statements made by Mr. Akerman in connection with the jury in this case, although he has not been called before the committee. It is noted also that the judge's son-in-law was representing the defendant in this case and that the alleged conduct of the judge on behalf of these defendants naturally redounded to the credit of his son-in-law.

Judge Speer has submitted a copy of the charge to the jury mentioned by Mr. Akerman, and as it is very lengthy it is not included in the record, but one can not read it, bearing in mind the relationship of the judge to the attorneys for the defense, and his evident ill-feeling toward the United States attorney, without being convinced that the judge was taking pains to make it perfectly clear to the jury that the proper thing to do was to acquit the defendant.

TESTIMONY OF JOHN R. L. SMITH.

(Pages 100–112.)

Upon this subject Mr. Smith testified that the conditions were very unsatisfactory, especially for the past five or six or seven years; that the court had not the confidence of the great mass of people; that the prevailing opinion among the people was that the outcome of litigation did not depend upon judicial consideration; that the attorneys were not accorded courteous treatment; that success in the court depended upon the particular lawyer employed for causes other than his ability, character, or industry.

TESTIMONY OF MR. W. H. BURWELL.

(Pages 974–993.)

Mr. Burwell testified that he resides at Sparta, Ga., is an attorney at law and at present holds the position of speaker of the House of Representatives of the State of Georgia; that he has known Judge Speer 10 or 15 years, and that during his practice it had been necessary for him to travel to Toxaway, N. C., to have a hearing before Judge Speer; that upon arriving there he found a large number of other attorneys, all from the southern district of Georgia, awaiting the hearing before Judge Speer of cases in which they were interested; that the rates were high and the accommodations poor at the small hotel in the town and that he was required to remain engaged in the hearings for 10 days, the judge only holding court 2 or 3 hours a day; that he noticed a "placard posted at the desk at the hotel which stated that the United States court was in session, or was being held at the pavilion on the island, and ladies were cordially invited, or something of that sort"; that he heard one of the attorneys—Judge A. L. Miller, of Macon—complain of the length of time he was required to remain at Toxaway in attendance upon the court. Mr. Burwell testified further in regard to the Mandell bankrupt case, which was pending in the court in 1906 and in which a composition had been agreed upon by practically all of the counsel of both the bankrupt and the creditors, and the question of payment of stenographer's fees for taking the examination before the referee having arisen, an objection was made by the attorneys to the bill—$90 being charged for the work, which covered the hearing during one morning—and the referee, upon the objection of counsel, reduced the fee of the stenographer to $45, and the matter was settled by the parties putting up that amount; that two or three days after reaching home he received an order from Mr. Proudfit, the referee, demanding the payment of $45 additional and stating that Judge Speer had ordered it.

Mr. Burwell also testified that in the Cauthon bankruptcy case, with which he was connected, the parties had arranged for the sale of the assets by the sheriff, Mr. Arthur Hutchinson, and agreed upon a fee of $10 for the service; that when the order was taken for the sale of the assets Judge Speer required them to strike out the name of Mr. Hutchinson and insert the name of Mr. Pope S. Hill, an attorney of Macon; that this action caused a delay in the sale of the goods, and in the meantime the stock was stolen or dissipated, so that it brought only $202, when it had been inventoried at about $1,200; that Mr. Hill was paid a fee of $40, expenses of $25 for selling this stock, while the parties had arranged to have it sold for $10. On cross-examination Mr. Burwell testified that the attorneys had agreed to have Mr. Hutchinson sell this stock because he resided at the same place, held an official position, and had agreed to turn the money into the registry of the court immediately after the sale; that Mr. Hill, who was appointed by Judge Speer and paid $65 for the same services, was a busy lawyer and resided at Macon, while the estate was some distance in the country, and before he could get over there some time elapsed and the stock of goods did not bring very much.

It is, of course, the usual practice where the parties agree to adopt their recommendations as to receivers, etc., but that practice does not appear to be followed by Judge Speer.

TESTIMONY OF MR. T. J. HILL.

(Pages 784–788.)

Upon being questioned as to the general reputation of Judge Speer in the administration of justice, Mr. Hill replied that the conditions were unsatisfactory, especially to the country bar and the litigants in the country; that he had had experience with clients who would make almost any kind of a compromise rather than go into the Federal Court; that there is a general feeling among the people that in order to be at all successful in litigation in Judge Speer's court you must approach the judge in some wireless or underground way—that is, by employing some friend of the court, naming especially Messers. Talley and Heyward and the firm of which Mr. Orville Park is a member, Mr. Park being one of Judge Speer's counsel in this investigation. As an instance of this condition Mr. Hill cited the case of the Exchange Bank of Cordele, which desired to be made a depository for bankruptcy funds. The president of the bank approached Mr. Hill and asked if there was some way by which the judge could be reached and the bank named a depository, to which he replied that he thought it could be arranged by having Mr. Talley make the application; that at the instance of the president of the bank he approached Mr. Talley, and upon agreeing to the payment of a certain compensation Mr. Talley soon had the matter fixed. He stated that was the way most of the people of his district felt; that they must approach the court in some other way than directly.

In connection with the testimony in the E. B. Harris bankruptcy case and the Huff case, from which it appears that Judge Speer appointed Judge Cobb as special master in the latter case and allowed him a fee of $750 for a few days' work, and that he also appointed Judge Cobb as one of the attorneys for the trustee in the former case and allowed him a fee of $400 for a very slight service, it is noted that Judge Cobb is one of Judge Speer's principal attorneys in this investigation, and it is further noted that he has represented Judge Speer in private litigation gratuitously in the past.

Judge Cobb was questioned by the chairman of the committee, and he admitted that he had represented Judge Speer in the case of Emory Speer et al. *v.* W. B. Thomas et al., and that he had rendered this service free of charge.

There will be found marked "Exhibit 25–B" a certificate from the clerk of the Superior Court of Clarke County, Ga., showing that Judge Cobb represented Judge Speer in the litigation mentioned, and that the case was heard at Athens, Ga., on May 9, 1910, and that the appeal was taken to the superior court and the record filed in that court September 6, 1910, and the case tried October 14, 1910. That motion for a new trial was made on October 19, 1910, which was overruled December 3, 1910; that on January 6, 1911, a bill of exceptions was filed taking the case to the Supreme Court of Georgia, and that it was finally decided on October 17, 1911. The clerk of the court says that Judge Cobb's firm appeared for Judge Speer all the

way through this case, which lasted, as appears from the certificate, for a year and a half. As stated, Judge Cobb admits that he performed these services for Judge Speer without compensation, and it is also true that he is acting for Judge Speer in this investigation, and that he was present during the whole of the sittings of the committee in Georgia, covering two weeks, and assisted in the preparation of Judge Speer's brief, his name being signed to the brief as leading counsel. It should also be noted that Athens, the home of Judge Cobb, is about 100 miles from Macon, and that there is no apparent reason why he should have been called such a distance to handle such an appointment as special master in the Huff case at Macon, or as assistant attorney for the trustee in the Harris case, especially as the judge had already appointed three attorneys for the trustee in that case. The fees allowed Judge Cobb by Judge Speer in these cases also appear to be excessive, $750 being paid in one case and $400 in the other case, for a very limited amount of services.

It is worthy of mention that the appointment of Judge Cobb in the Harris case was apparently a personal matter with Judge Speer, as he was brought into the case at a time when the attorneys for the plaintiff had applied to the circuit court of appeals for a writ of mandamus requiring Judge Speer to recuse himself after an affidavit of disqualification had been filed against him, and after he had refused to disqualify himself.

All of these facts and circumstances create the suspicion that Judge Speer was paying Judge Cobb for service of a private nature out of funds from bankrupt estates.

Certainly the committee imputes no wrong to Judge Cobb, but a proper sense of propriety would have prevented Judge Speer from drawing Judge Cobb into these cases and allowing him large fees so soon after his gratuitous services in a private lawsuit.

ALLEGED OPPRESSIVE CONDUCT IN ENTERTAINING MATTERS BEYOND HIS JURISDICTION, FINING PARTIES, ETC.

THE J. T. HILL CONTEMPT CASE.

TESTIMONY OF MR. JOHN R. L. SMITH.

(Pages 93–100.)

Mr. Smith testified that he was familiar with the case in which Judge Speer issued a rule to show cause why Mr. Hill should not be attached for contempt for not paying to the counsel of a man by the name of Gibson either $37 or $75. Mr. Smith stated that Mr. Hill telephoned him one night that he had just been served with an order to show cause, having first received a telegram from the marshal to meet him at the train. That Mr. Hill stated that he met the train as requested, and was served with an order to show cause, without being given a copy of the petition upon which the rule was granted; that Mr. Hill asked him to learn what the order was about, and that he advised him that it could not be done at night and suggested that Mr. Hill come to Macon immediately. That Mr. Hill lived at Cordele, about 51 miles distant from Macon, and was served with the rule on the afternoon of May 2, 1911, the rule requiring him to appear

at Macon at 9 o'clock on the following morning; that Mr. Hill took the night train and arrived at Macon early the next morning, and after calling at Mr. Smith's office, proceeded to the courthouse, accompanied by Mr. Smith; that they obtained access to the papers in the case and learned that one John Gibson, through his attorney, W. D. McNeil, had filed suit against Mr. Hill for the recovery of money alleged to have been received by him, for which no services had been rendered. That he assisted Mr. Hill in preparing an answer to the rule and appeared in court at the time mentioned in the rule; that he understood Mr. McNeil, the attorney for Gibson, was related to Judge Speer. That when Mr. Hill's case was taken up there was some testimony and some argument, after which Judge Speer delivered an opinion, at the close of which he stated "that if Mr. Hill would pay $37.50 the matter would be dropped, or hushed up, or something to that effect, that no judgment would be rendered, or some such expression as that." That he (Mr. Smith) arose and stated to the Judge that Mr. Hill would not do that, to which the judge replied, "then I will order him attached and imprison him until he does do it." That he then stated to the judge that Mr. Hill had not refused to obey the order of the court; that he had merely declined to accept that method of quashing it. That Mr. McNeil then prepared a judgment on the original petition and handed it to the judge. That the judge expressed dissatisfaction with it and said, in substance, that he would prepare one to suit himself. That he and Mr. Hill waited a few moments, and later got up and walked to his (Mr. Smith's) office and hastily prepared papers for an appeal and hurried to Atlanta to see Judge Pardee. After arriving at Atlanta they communicated with Macon to learn whether any order had been signed in the case, and were advised that no order had as yet been signed in the case. They proceeded to Judge Pardee's house, and at his suggestion left the papers in his possession, with the understanding that an appeal would be granted in case an order was signed by Judge Speer. That they then returned to their homes, and that on the following Monday morning, after court had opened Judge Speer made some remarks, referring to counsel having gone to Atlanta to make an appeal in a case in which no judgment had been rendered, expressing regret that counsel had put themselves to such unnecessary trouble, and concluded by saying that he would grant a rehearing in the case, suggesting that Mr. Smith take the order. Mr. Smith made no response, and Judge Speer then stated if he did not care to do so Mr. McNeil could take the order. That this was the last heard of the matter until several months later, when Mr. Hill received an order from Judge Speer reversing his former holding and finding in favor of Mr. Hill. That Mr. Hill was requested by him to file the order, which was done.

TESTIMONY OF MR. CECIL MORGAN.

(Pages 522–525.)

Mr. Morgan was placed on the stand and requested to put the records in this case before the committee. Mr. Morgan then produced the records and read the titles and the substance of their contents, the contempt rule being dated May 1, 1911, and requiring the appear-

ance of Mr. Hill at the court at Macon, at 9 a. m., May 3, 1911. Mr. Morgan testified that the papers showed the service of the rule had been made on May 2, 1911. The order of the court for a rehearing of the case after the defendant had proceeded to Atlanta to effect an appeal was read into the record in full.

TESTIMONY OF MR. J. T. HILL.

(Pages 769–783.)

Mr. Hill stated in substance as follows: On May 2, 1911, he was engaged in the trial of cases in the city of Cordele, and during the morning received a telephone message from the United States marshal, Mr. George F. White, directing him to meet one of his deputies at the railroad station at 2 o'clock in the afternoon. He asked to be excused from the city court, and met the deputy marshal at the depot, who served him with this order:

> The foregoing petition read and considered. It is ordered by the court that the said J. T. Hill show cause before me at Macon, Ga., on the 3d day of May, 1911, at the hour of 9 a. m., why the prayer in said petition should not be granted.
> This the first day of May, 1911.
>
> EMORY SPEER, *Judge.*

The entry of the deputy shows that the order was served in Crisp County on May 3, requiring defendant to appear on the same day, but that is evidently an error, because it was served on the 2d. He returned to court, and after adjournment asked for leave of absence to appear in the Federal court, and after having obtained it went to his office and communicated with Mr. John R. L. Smith, of Macon, by telephone. The order which was read was the only thing served upon him. He asked Mr. Smith to consult the clerk of the court and advise him by telephone what the trouble was. Mr. Smith called him later and acquainted him with the facts. He left home at 1.30 a. m. and on arriving at Macon consulted Mr. Smith relarive to the case. They hurriedly prepared an answer to the rule issued by the judge and attached copies of correspondence from his files. Mr. Hill stated that the plaintiff against him in this case, John Gibson, was at the time on trial for burglary of a post office, and that he (Hill) was required to attend court day after day until the conclusion of the trial of Gibson. He testified that Gibson was convicted, and that in sentencing him Judge Speer remarked that he was one of the worst characters that had ever appeared in his court. Immediately after this case the case of Gibson against Mr. Hill was called, and after the evidence was in and a short argument made, Judge Speer stated he was inclined to believe that Mr. Hill should refund one-half of the money received from Gibson ($75) and that if he would do so no further order in the premises would be made. Mr. Hill then read into the record the colloquy between Judge Speer and his attorney, Mr. Smith, which ended with the statement by the judge that he would not allow an appeal from his ruling in the matter. Mr. Hill then gave a statement of the facts relative to his services to Gibson for which the fee of $75 in the case was received. He next testified that after the judge had stated that he would be compelled to refund one-half of the fee received—that is, $37.50—he declined to do so, and the judge then stated he would be adjudged in contempt of

court and ordered arrested by the marshal. His attorney, Mr. Smith, secured a copy of the proceedings and prepared papers for an appeal, and he and Mr. Smith then took the train for Atlanta and presented the matter to Judge Pardee, but after arriving there learned, upon communicating with Macon by telephone, that no order had been signed in the case by Judge Speer. That the appeal papers with the bond were then left with Judge Pardee with the assurance from the judge that upon telegraphic information that an order had been passed in the premises by Judge Speer the appeal would be granted and the bond fixed. Mr. Hill then testified that he was informed that Mr. Smith was in court the following Monday morning at Macon, and was advised by Judge Speer that he would grant a rehearing in the case, but Mr. Smith declined to take the order. Mr. Hill stated he heard nothing further from the case until in September, 1911, when he received a letter from Judge Speer apologizing for his action in the case, and inclosing a signed order reversing his former ruling, and deciding the matter in favor of Mr. Hill; that as a matter of course he knew Judge Speer had no jurisdiction in such a case, but the matter rather reflecting upon his personal integrity he was not inclined to raise any question of jurisdiction, feeling that when the facts were investigated he would be exonerated from any such charge. Mr. Hill further testified that he was informed that the attorney for Gibson, the plaintiff against him in this case, Mr. W. D. McNeil, was a relative of Judge Speer and at that time on intimate terms with the judge.

On cross-examination Mr. Hill stated (pp. 788–802) that he ascribed the actions of Judge Speer in this case to his favoritism toward his relative, W. D. McNeil, who was representing the plaintiff against him (Mr. Hill). Upon being questioned further as to his complaint against Judge Speer Mr. Hill replied, "When the judge of a court states to me that by paying into court a pittance of $37.50 he would wipe out what he called a breach of duty or professional ethics, as if I wanted to wipe out a charge which was a blot upon my professional character, it is enough to cause any man to resent it."

In this case there is no dispute as to the facts. The uncontradicted evidence shows that Judge Speer issued a rule against Mr. J. T. Hill on a suit filed by Mr. W. D. McNeil, a kinsman of Judge Speer, for the collection of $75 from Mr. Hill; that the rule was served upon Mr. Hill about 2 p. m., May 2, 1911, and required him to appear at Macon, some 50 miles distant, at 9 o'clock on the following morning; that Judge Speer kept this gentleman at court some three or four days awaiting trial, and upon the hearing ordered him to refund $37.50 to the plaintiff, stating that he would be arrested by the marshal and put in jail if he did not comply; that he refused to grant an appeal in the case or fix a supersedeas bond, and that Mr. Hill and his attorney hastened to Atlanta to effect an appeal. Judge Speer neglected to sign an order in the case, and subsequently reversed his original holding and found in favor of Mr. Hill.

The complaint is, of course, that Judge Speer entertained this civil suit for the collection of $75 without jurisdiction, and unjustly cited Mr. Hill to appear in court on a summary rule at the instance of his kinsman, Mr. McNeil.

Judge Speer claims that his conduct in issuing the summary rule against Mr. Hill was proper, but he admits that his action in deciding

the hearing adversely to Mr. Hill was improper, and that he later reversed himself without any application therefor. It is thought the facts in this case show not only a distorted idea of the contempt power of the court, but also an unwise attempt to exercise it in endeavoring to collect this money on behalf of his kinsman, who entered the suit. He admits, in reversing his order, that he was wrong in deciding against Mr. Hill, and he should have gone further and admitted that he had exceeded his power in ruling Mr. Hill to appear in court in answer to a rule nisi, and in keeping him there about a week on a case which was nothing more than a mere claim for money had and received, which was later found to be without foundation. If attorneys of such high standing as Mr. Hill can be summarily brought into court upon the application of a criminal through his counsel and subjected to such indignities as Mr. Hill suffered in this case, the courts of our land would be anything but courts of justice. This action of the judge would not appear so censurable were it not for the fact that his kinsman brought the suit, and it is certainly proper to consider the action of Judge Speer in that light. With nothing before him but the statement of a criminal, who was at the time being tried for burglary, to the effect that this gentleman had not rendered services for money received, Judge Speer granted this harsh rule at the request of his kinsman and put Mr. Hill to much annoyance, humiliation, and unnecessary expense. At best this case should have been no more than a mere action for debt, and Judge Speer should not have acted in this summary manner.

EMMA POWERS-KEARNEY WRIGHT CONTEMPT CASE.

TESTIMONY OF KEARNEY WRIGHT.

(Pages 144–149.)

Kearney Wright stated in substance as follows:

That he is a resident of Macon, and employed at the Federal building as janitor of the court rooms, and under the employment of the postmaster. In reply to questions from the chairman, Kearney Wright stated as follows: "I remember, sir, once I was fined. I left the cuspidors off one evening after cleaning them—an oversight, and I was brought up and fined a dollar; but I didn't pay it." He was asked if he had not been fined $10 on another occasion for a similar cause, but could not remember any such occasion.

TESTIMONY OF EMMA POWERS.

(Pages 149–155.)

Emma Powers stated that she was a resident of Macon, Ga., and employed at the post-office building as janitress. Upon being questioned as to being fined by Judge Speer for contempt of court, she stated that Mr. Tucker (deputy marshal) had come to her and stated that she would have to pay a dollar because the court room was not cleaned and that she gave a dollar to Mr. Tucker; that she was not in court when the fine was imposed, and that Mr. Tucker told her it was imposed for failing to keep the court room clean. She also testified that on another occasion Mr. Tucker informed her that she would

have to sign a bond for her future good conduct in caring for the court room, but that she declined to do so; that he also advised her that she had been fined $10, but she did not pay it. In reply to the question as to why she declined to give the bond she replied, "I didn't know what I was going to say. He told me to sign 'right there,' but I told him I wouldn't sign it." She stated also that Kearney Wright was present, but that he did not sign the bond either. The order of the court, dated April 14, 1910, was then read into the record. This order imposed a fine of $10 each upon Kearney Wright and Emma Powers for failing to properly care for the court rooms. The collection of the fine was suspended in the order. Emma Powers was further questioned upon this subject, and again stated that she was asked to sign a bond, but refused to do so. She stated this took place in the judge's room.

TESTIMONY OF HENRY G. TUCKER.

(Pages 532–535.)

Mr. Tucker stated that he held the position of deputy United States marshal, and that he knew Emma Powers and Kearney Wright; that he had received fines collected from Emma Powers and Kearney Wright of $1 each turned over to him by the marshal, Mr. White, December 10, 1910. Being questioned as to his knowledge of the making of bonds by these people for their future conduct in caring for the court rooms, Mr. Tucker stated that the marshal, Mr. White, had informed him that Kearney Wright and Emma Powers would be required to make bond in the sum of $1,000, each going the surety of the other on said bonds. He stated further, he understood Emma Powers refused to sign the bond; also, that Mr. White told him the judge had suggested the bonds, but that he did not know it of his own knowledge.

On cross-examination (p. 545) Mr. Tucker stated that the fines collected from Emma Powers and Kearney Wright were handed to him by the marshal, Mr. White, who stated that the judge had loaned the money to them.

TESTIMONY OF GEORGE F. WHITE.

(Page 1393.)

Mr. White testified that Judge Speer paid the fines imposed in these cases.

The evidence on this subject shows that Judge Speer fined employees of the custodian of the Government building for neglect of duty, over whom he had no jurisdiction; also, that he attempted to force employees to give a bond for the future performance of their duties, although they were responsible only to the custodian of the building. (See copy of court order, marked "Exhibit No. 4.")

The committee thinks this action on the part of Judge Speer was more farcical than serious; but a great court should not lend its powers to such an end.

CASE OF GORDON SAUSSY (STENOGRAPHER FEES).

TESTIMONY OF GORDON SAUSSY.

(Pages 1569–1589.)

Mr. Saussy testified that he represented the defendants in the case of United States *v.* A. F. Atkinson, which was tried in Savannah in March, 1908, and that at the close of the case he wished to obtain from the court stenographer, Mr. Coddington, a copy of the testimony of one of the witnesses, a Mr. Thomas; that he requested Mr. Coddington to prepare the transcript of the testimony of this witness, but that when the testimony was written up he found he had prepared a transcript of all the evidence, which was left in the office of the marshal with a blank check for $55, with an order that it was not to be delivered to Mr. Saussy until the check was signed or the amount of $55 paid; that he declined to accept the entire transcript, but offered to take the part he ordered and pay for it; that Mr. Coddington refused to accept that offer, and stated that he would rule Mr. Saussy to appear before Judge Speer; that a rule was issued against him, and after a hearing before Judge Speer, the judge reserved his decision, and a few days later "issued a rule absolute against me for $55 and costs." Mr. Saussy states he paid the clerk on May 7, 1908, the aggregate amount being $61.50. He testified further that the hearing developed that the facts in question were strictly up to himself and Mr. Coddington; that he (Saussy) in response to the rule nisi, raised the question of jurisdiction, and after the judge decided the case he seriously considered an appeal to the Circuit Court of Appeals, but later decided not to do so, as it would cost his clients too much money; that he considered Judge Speer treated him unjustly.

This case is somewhat similar to the J. T. Hill contempt case, and it is not apparent by what law or reason this gentleman was forced to accede to the demands of the judge's secretary upon such proceedings in the Federal court.

It was merely a question of disputed facts between an attorney and the judge's stenographer, and certainly there was no jurisdiction in Judge Speer of any kind, especially for the issuance of a summary rule to bring this reputable attorney into court as in a criminal proceeding.

The summary powers of the court should not have been used to assist its stenographer to collect a simple debt.

C. R. MULHOLLAND CONTEMPT CASE.

TESTIMONY OF MR. TUCKER.

(Pages 535–537.)

Mr. Tucker testified that a fine of $3 had been collected from R. C. Mulholland for contempt of court, the entry upon his book under date of December 10, 1910, being "fine imposed by court on C. R. Mulholland, crier, $3." He testified further that Mulholland had been drunk in the courthouse on the previous day and also on the train the previous evening, but he did not know positively on what account the fine was imposed.

THE E. P. DAVIS CONTEMPT CASE.

TESTIMONY OF MR. E. P. DAVIS.

(Pages 1208–1213.)

Mr. Davis testified that he was an attorney residing at Warrenton, Ga., and that in the summer of 1896 he was representing one Max Stein, who was charged with concealing his assets while a bankrupt. That Stein had been arrested and bound over by the commissioner to the court, and that after the court convened he and Stein were present during the sessions of the grand jury; that one day on going into the courthouse one of the Government witnesses casually stated to him that he understood the grand jury had failed to find a true bill against Max Stein; that he made no inquiry of the witness, but did go to the clerk of the court and ask him whether the grand jury had acted on the Stein case. That the clerk informed him that the jury had voted no bill, but that their report had not been made to the court; that the witnesses for the Government, as well as himself and Max Stein went home; that he was later informed that the grand jury had reconsidered the Stein case and found a bill against him; that he immediately communicated with Stein and told him to return to the court at Augusta, and himself took the train for that place. That when the case was called in court Stein was not present, and he (Davis) arose and stated to the court that Stein was not present, but would be there on the next train; that the judge asked him if he told Stein to go away, and that he replied that he did, but that as a matter of fact he had not actually told him to go, although he knew he was going. That Judge Speer then imposed a fine of $50 on him, and ordered the marshal to collect it, stating in his order that he (Davis) had been inquiring of the Government witnesses. Mr. Davis stated that he had not inquired of the witnesses and had done no wrong in the matter, and that he regarded the action of the judge in fining him as arbitrary and unjust.

The evidence in this case shows the harsh conduct of Judge Speer. The defendant was out on bond and no possible harm could have resulted, even though it should appear that Mr. Davis advised him that he could go home. Mr. Davis had committed no flagrant offense, even though he did advise the defendant that he might go home after being informed by the clerk of the court that the grand jury had voted "no bill" against his client. Mr. Davis swears the judge in making the order fining him for contempt misstated the facts and reflected upon his integrity unjustly and arbitrarily.

Judge Speer states that his action was due to the fact that the court business had been impeded by attorneys and clients absenting themselves when they were required at court, but as a matter of fact much of the evidence taken during the investigation showed that the court business was neglected by the judge and that court was generally adjourned before the parties waiting to be heard had presented their cases. Also that they were seldom able to tell when court would convene, so that it was difficult to be prepared, all on account of the fact that court was not held at the times prescribed by the law.

ALLEGED ABUSE OF AUTHORITY IN REFUSING TO ALLOW THE DISMISSAL OF LITIGATION FOR PURPOSE OF PERMITTING RELATIVES AND FAVORITES TO RECEIVE FEES.

THE ELECTRIC SUPPLY CO. CASE.

TESTIMONY OF MR. ANTON P. WRIGHT.

(Pages 1978–1998.)

Mr. Wright testified that he was an attorney by profession and had practiced at the Savannah bar since 1898; that in the case of the Electric Supply Co. his firm was retained by certain creditors to file a petition in bankruptcy against the concern mentioned, asking in the petition for the appointment of a receiver; that subsequently his clients accepted an offer of composition at 40 cents on the dollar and he made oral application to Judge Speer, asking that the bankrupcy proceedings be dismissed, and that Judge Speer declined to dismiss the proceedings, and suggested that he go ahead with the matter "and take an order for the appointment of a receiver"; that he declined to take the order mentioned without communicating with the other members of his firm; that they did not wish to take the order, but that Judge Speer intimated that they might get in trouble by attempting to dismiss the case, and that he finally prepared the order; that this proceeding took place at Macon, Ga., and that he took the night train for Savannah and found upon the train Mr. George F. White, who had been appointed receiver in the case by Judge Speer, Mr. Akerman, and Mr. Heyward, Judge Speer's son-in-law, who had been retained by the receiver as his attorneys in the case; that there was a conflict of authority between the State and Federal court with regard to the possession of the assets of the Electric Supply Co. and that it was finally decided in favor of the Federal court.

Mr. Wright stated that Mr. Akerman and himself did practically all the legal work in the case, but that Mr. Akerman divided the fee, amounting to $2,250, equally with Talley & Heyward, giving as his reason that he feared Judge Speer would be put out with him if he did otherwise. He also testified that his clients, the creditors mentioned heretofore, received only 13 cents on the dollar when the case was wound up, while they would have received 40 per cent if Judge Speer had allowed the settlement of the case as agreed upon by all parties. Mr. Wright testified on cross-examination that at the time he made the oral application to Judge Speer to dismiss the bankruptcy petition the judge declined to allow him to do so, but coerced him into taking the order for a receiver, and that no opportunity was given him to present the matter in writing and ask for a meeting of creditors after proper notice. He also stated on cross-examination that the long opinion of Judge Speer, presented to him by Mr. Calloway, Judge Speer's attorney, was never delivered in his presence, and that he knew nothing of it until the present time; that the Judge had stated his clients had better be careful or they would get in jail, and that he seemed to be very angry because Mr. Wright wished to dismiss the case and declined to ask for the appointment of a receiver.

TESTIMONY OF MR. W. V. DAVIS.

(Pages 1780–1794.)

Mr. Davis testified that he had been appointed receiver for the Electric Supply Co. by the State court and after holding it a year or more had gotten its affairs in such shape that a committee of the creditors had agreed to continue it in business, and the prospects were that it would become prosperous and pay its debts in full and leave something for the stockholders. That certain of the creditors, however, failed to enter this agreement and bankruptcy proceedings were instituted against the company in the latter part of July, 1909; that bankruptcy was resisted by the company and insolvency denied; that the principal creditors, including those who signed the bankruptcy petition, subsequently formed a plan for the continuation of the company and agreed to pay all creditors who did not wish to enter the agreement 40 cents on the dollar, which was accepted by these creditors. That petition was then made to Judge Speer for dismissal of the bankruptcy proceedings, but he declined to do so, although he was shown that all of the parties in interest were in accord on the proposition; that Judge Speer appointed George F. White receiver, and that when he attempted to displace Mr. Davis, who had been appointed receiver by the State court, a lengthy legal controversy ensued during which he (Davis) was served with a rule to show cause why he should not be punished for contempt for declining to turn over the property; that when the controversy was finally settled he was ordered to turn the company over to Mr. White, the receiver of the Federal court. That he had held the company for 15 months and operated it at a profit, and that when it was turned over to Mr. White all of its assets went with it. That he applied to Judge Speer for a fee for his services and that Judge Speer declined to allow any fee; that he went to Macon to see Judge Speer at his home at his request and was received courteously by the judge, but during the conversation noticed the judge's stenographer behind a screen taking down all of the remarks made. That he felt from then on that there was very slight chance of getting a fee and that he promptly left, after being told by the judge to file his application; that the judge referred his application to a master, R. M. Hitch, who took his testimony and decided he was not entitled to any fee, which was sustained by Judge Speer; that Mr. Hitch was allowed $175 for making this disallowance. Mr. Davis testified further that Mr. White, the receiver appointed by Judge Speer, was paid $850 for holding the property two months, while he was denied any fee whatever for holding it 15 months. Also that Mr. Hitch, the master, was allowed $250 for passing upon the fee allowed Mr. White; that the attorneys for the receiver were paid $2,250 and that the amount finally received by the creditors was 13 per cent, nothing whatever being realized by the stockholders. Mr. Davis also stated that as far as he knew the contempt proceedings against him had never been dismissed.

The action of Judge Speer in declining to allow this case to be dismissed should be considered in the light of the fact that he appointed George White receiver and allowed him a fee of $850, and that this receiver employed Talley & Heyward as his attorneys, and that they received a fee of $1,125 from the case, although they performed very

little service. It is noted that Mr. Anton P. Wright testified in this case that on the day the judge refused to dismiss the case at his request and threatened him with imprisonment for attempting to dismiss it, he found George White and Mr. Heyward on the train for Savannah on their way to take charge of the company.

ALLEGED VIOLATION OF THE BANKRUPTCY ACT IN ALLOWING COMPENSATION IN EXCESS OF THE PROVISIONS OF THAT ACT TO HIS PERSONAL FRIENDS.

THE WHITE SUPPLY CO.

The records in this case show that Mr. Orville Park, one of Judge Speer's attorneys in this investigation, was employed as attorney for petitioning creditors and that the application of his firm for fees was referred to a special master for report. The special master appointed by Judge Speer, A. J. Crovatt, allowed Mr. Park $350 for the services of his firm in this case, and when the matter was passed upon by Judge Speer he raised the compensation of Mr. Park to $550. It should be noted that this allowance was made on September 13, 1913, after the investigation of Judge Speer's conduct had been made by the examiner of the Department of Justice, and after Mr. Park had been selected to defend Judge Speer in the present investigation.

Judge Speer testified, in answer to questions, that he raised this fee allowed to Mr. Park's firm because Mr. Park had brought into the estate an additional sum amounting to $3,400. An examination of the papers, however, appears to show that Mr. Park had nothing whatever to do with the bringing into the court of the additional money mentioned, as he was representing the creditors, while the property from which the money arose was sold by the trustee, and it is apparent from the records that the first knowledge Mr. Park had of this sale by the trustee was through a letter written him by Mr. A. J. Crovatt, the referee in bankruptcy, and that Mr. Park took this letter to Judge Speer at Mount Airy, Ga., whereupon Judge Speer increased the amount of his compensation as allowed by the master from $350 to $550. This letter is in evidence as Exhibit 25 and is followed by a copy of the master's report and the order of the judge thereon increasing the fee allowed to Mr. Park, marked "Exhibit 25–A." It is noted that Mr. Park's firm in making their application for fees which was referred to the special master, reciting the services which they have performed, make no mention of any further money to be realized.

The records also show that this additional money, which was brought into court by the trustee was realized from the sale of a piece of land, and that the trustee had been authorized to employ the firm of Crawley & Crawley to represent him. It is therefore apparent that if the compensation of any firm of attorneys should have been increased on account of the money realized by the trustee, it should have been allowed to his attorneys, Messrs. Crawley & Crawley, and not to Mr. Park's firm, as his firm was representing the creditors and not the trustee. The records show further that Judge Speer authorized the employment of an attorney for the receiver as well as trustee in the case, and also that the bankrupt was

represented by a firm of attorneys, all of whom were paid fees out of this estate. The attorneys for the bankrupt were allowed by the special master $350 as their fee, and that when the matter was passed upon by Judge Sheppard he reduced their fee to $125. The fee allowed the attorneys for trustee amounting to $250 was not increased by Judge Speer, although they were apparently the parties who should have received the additional compensation on account of the additional money realized, instead of Mr. Park's firm, if indeed, any increase should have been made. It is apparent from the records in this case that Judge Speer increased the fee of this lawyer who was at that time acting as his private attorney in this investigation, thereby depriving the creditors of the amount of the increase, $200, and that he also stated on the stand that this increase was made on account of additional money brought into the fund by Mr. Park, while the record shows that Mr. Park had nothing to do with it, and that the additional money was brought in by the trustee without the knowledge of Mr. Park. It also appears that Judge Speer should have had knowledge of this fact, as it is noted that he indorsed the letter which is mentioned as Exhibit 25, in which Mr. Park is informed by the referee that the trustee has realized the money in question.

This appears to be improper conduct on the part of Judge Speer, and whether corrupt or not, he should not, under the circumstances, have let himself be placed in a position of seeming to give increased or extra compensation out of the assets in his court, to counsel who was at that very moment his private attorney in the pending investigation by Congress.

ALLEDGED VIOLATION OF BANKRUPTCY ACT IN RAISING FEE OF ORVILLE A. PARK FROM $500 TO $800 IN RODGERS AND JOINER CASE.

In this case Mr. O. A. Park, who, as stated, is one of Judge Speer's attorneys in this investigation, was trustee for the bankrupt estate, and was allowed by Judge Speer $800 extra compensation, that is, in addition to the regular percentage or commission allowed by the bankruptcy act. His application for extra compensation was referred to a special master who allowed him $500, but Judge Speer in signing the order raised this extra compensation to $800.

This case was instituted in 1902 and was governed by the act of 1898 as it stood at that time. Section 48 provides that the trustee shall receive as full compensation 3 per cent on the first $5,000 or less and 2 per cent on the second $5,000 or part thereof, and 1 per cent on all sums in excess of $10,000. The order of the court in allowing this extra compensation states that it is done on account of the unusual amount of work involved. The act allowing additional compensation to trustees for carrying on the business was not passed until February 5, 1903, and the amendment of that date provides, section 19: That the provisions of this amendatory act shall not apply to bankruptcy cases pending when this act takes effect, but such cases shall be adjudicated and disposed of conformably to the provisions of the said act of July 1, 1898. As the case in question was instituted early in 1902 there would not seem to be any justification for this extra compensation even if it appeared that Mr. Park carried on the business as trustee, which, however, does not

appear, and the allowance of the extra compensation is not put upon that ground. Another fact in this case is that Mr. Park's firm was appointed as attorneys for trustee, Mr. Park himself being trustee, and this firm on applying for a fee was allowed by the special master to whom the application was referred $1,500, but when Judge Speer approved the order he raised this fee to $1,800. This was of course a discretionary matter, but the discretion appears to have been again operated in favor of Mr. Park, who is alleged to be one of Judge Speer's favorites.

This is the case mentioned in connection with the reversals of Judge Speer, in which he took the property away from the trustees operating it, and was reversed by the circuit court of appeals, which commented on his conduct in no uncertain terms.

The subcommittee feels that there is some doubt as to the meaning of the amendment of 1902 to the bankruptcy law as to allowances to trustees, but has no hesitancy in saying that the practice of appointing an attorney a trustee, and then appointing the attorney's firm attorneys for such trustee, is bad, and ought not to be allowed by any judge, and the judge who allows it shows a striking lack of judicial propriety.

RAISING FEES ALLOWED TO OTHERS IN ORDER THAT SON-IN-LAW MIGHT PROFIT THEREBY.

TESTIMONY OF ALEXANDER AKERMAN.

(Pages 1063–1081.)

On this subject Mr. Akerman testified that he had been of counsel in the A. D. Oliver bankrupt case, in which all of the assets were consumed in the payment of expenses and fees to attorneys and court officials; that Messrs. Talley & Heyward were also of counsel in the case, and that after the litigation had proceeded some time he went to Mount Airy, Ga., to see Judge Speer, and while there Judge Speer and Mr. Heyward approached him on the lawn of the hotel and the judge stated that Hassell (his son-in-law) was badly in need of some ready money and asked if there was any reason why the fees of his firm should not be allowed at that time; that the master had fixed the fees of some of the attorneys, and that he (Akerman) had filed objection to the amount allowed his firm; that he replied to Judge Speer that the fee fixed for his firm was inadequate, and that he would not consent to the allowance of fees until it was raised proportionately. He states Judge Speer then asked if his fee was raised in proportion would that remove his objection, to which he replied that it would; that the judge then took the papers and made an order raising the fees allowed his firm from $200 to $375, after which the fees of Talley & Heyward, and Hawes & Pottle, as attorneys for trustee, amounting to $2,000, were allowed.

On the subject of the influence of Judge Speer's son-in-law, Mr. Akerman testified that the first estrangement between himself and Judge Speer arose from the fact that he (Akerman) would not recommend Mr. Heyward (Judge Speer's son-in-law) for the position of assistant district attorney. Mr. Akerman testified that as far as he knew Mr. Heyward had never tried a case in court by himself or ever even tried a justice court case.

Mr. Akerman states that since this estrangement he does not recall that he had ever succeeded in convicting any defendant in a hotly litigated case, and that he attributed this fact to the judge's charges to juries and his manner of conducting cases, and in nagging and dogging at him (Akerman), which, of course, gives the juries a bad impression; that these actions on the part of the judge are due to prejudice and anger toward himself.

If it is true, as Mr. Akerman testifies, that Judge Speer raised the fees of Mr. Akerman's firm from $200 to $375 in order to remove the objection to the payment of the $1,000 fee to his son-in-law, his action subjects him to the charge of improper influence in favor of Mr. Heyward, and in this connection attention is invited to the testimony of other witnesses that the fees received by these attorneys were entirely out of proportion with the services performed, though Mr. Akerman says the fee allowed Talley & Heyward was not too large, but his was too small.

Judge Speer makes a direct denial of the charge made by Mr. Akerman.

ALLOWING MONEY TO REMAIN ON DEPOSIT WITHOUT INTEREST IN BANK IN WHICH RELATIVES AND FRIENDS WERE INTERESTED.

TESTIMONY OF MR. WILLIAM GARRARD.

(Pages 2014–2018.)

Mr. Garrard testified that in the Max Alexander case there was a fund of $46,133.89 deposited in the registry of the court to await the outcome of litigation, and that he and the attorney for the other side got together and made an arrangement for placing the money in the court in a depository where it would bear interest, and made a formal application to Judge Speer, naming two of the principal banks in Savannah which had agreed to pay interest on the money and give bonds for its protection; that Judge Speer declined to allow this money to be placed at interest, and that it remained in the registry of the court practically two years without interest, the case having started in January, 1906, and closed up in March, 1908. On cross-examination Mr. Garrard testified that as he, representing the plaintiff, and Mr. R. M. Hitch, representing the defendant, made the application jointly there were no other parties in interest, and there was no reason why the judge should not allow the money to be placed at interest.

The action of Judge Speer in thus refusing to allow this large amount of money to draw interest without giving any satisfactory reason needs no comment.

ALLEGED USE OF NEWSPAPERS FOR PRIVATE PURPOSES.

TESTIMONY OF MR. T. J. SIMMONS.

(Pages 549–572.)

Mr. Simmons stated that he was the managing editor of the Macon News, and had been connected with that paper for about eight years. That he was acquainted with Judge Speer and had known him for

15 or 20 years; that Judge Speer had written and furnished articles about himself to the Macon News for publication, and that he had published some of them. In answer to the question as to whether Judge Speer was fond of newspaper notoriety Mr. Simmons said, "I think he liked it pretty well." He also testified that he had written articles for Judge Speer at the judge's request about addresses he was to make to various organizations, etc. Mr. Simmons then identified an article in Judge Speer's handwriting requesting publication of matter furnished by the judge. He next identified the manuscript of a typewritten article having alterations in the handwriting of Judge Speer, which article, Mr. Simmons stated, had been sent to him by the judge for publication.

He testified further that a controversy had arisen over the article published, and that he had made an affidavit to Mr. W. D. McNeil, an attorney in the case, with regard to the request of the judge for publication of the article. That Judge Speer had become angry because he (Simmons) had changed the introduction to the article, which was done to improve the newspaper style of it; that in rendering an opinion later in the Henry *v.* Harris case, about which the article in question was written, Judge Speer "went for me pretty strong in the opinion. I could never understand just why." That in this opinion the judge had excoriated him and spoke of having heard "my melodious voice" asking for "advertisements of the bankruptcy cases," or something to that effect. Mr. Simmons testified further that he had at different times suggested to Judge Speer that he divide the bankruptcy advertising of the court between his paper, the Macon News, and the Macon Telegraph, giving the advertising to one paper one year and to the other paper the next. That the judge declined to grant his request, stating that he "did not want to leave his neighbor on the other paper," and that he was afraid he "might incur the wrath of the Macon Telegraph." Upon being questioned as to whether he was able to procure a copy of the opinion of the court which made reference to him (Mr. Simmons) he replied that he was never able to do so, and that the opinion was published later with the reference to himself eliminated therefrom. On cross-examination Mr. Simmons stated that Judge Speer had never requested him to publish any article which contained anything vicious or unsuitable for publication or seditious in its nature, or calculated in any way to disturb the peace. In answer to questions as to whether the articles furnished by the judge referring to himself personally contained anything which would injure the public in any way, Mr. Simmons stated, "No, sir; it might have hurt somebody's feelings that did not like the judge. That was the only objection I could see." That the articles published at the request of the judge were generally laudatory of what the judge had said and sometimes lauding other people. Mr. Simmons testified further that one of the judge's friends had brought to him for publication an "editorial," highly recommending and indorsing the judge for appointment to the United States Supreme Court Bench, and that he thought Judge Speer wrote the article.

TESTIMONY OF GEORGE W. LONG.

(Pages 573–574.)

Mr. Long stated that he was the managing editor of the Macon Telegraph, and that he occasionally had telephone calls from Judge Speer with reference to the publication of articles in his newspaper, probably four or five times a year.

TESTIMONY OF JOHN M. BARNES.

(Page 922.)

With regard to the desire for newspaper publicity and on the part of Judge Speer, Mr. Barnes testified that during the session of the court in March, 1904, one Harry Olson had been convicted by the court and was the "worst frightened and most inoffensive prisoner on earth," but that the judge, being short of sensations, wrote up a newspaper article to the effect that Olson and his pals had laid plans to assassinate the judge; that the judge prepared a beautiful, thrilling story on the subject for the paper, and also prepared in advance his denial of this story. Mr. Barnes testified further that the judge gave the newspapers advance information with regard to the finding of indictments before warrants were served by the marshal or even put in his hands.

This and other evidence tends to show that Judge Speer is fond of "newspaper notoriety" and "gets his name in the papers" more often than a judge of less modesty might do, but the subcommittee will not undertake to condemn him for this weakness, which in this day is peculiar to a large portion of our population.

ALLEGED USE OF DRUGS—IMPAIRED CONDITION OF MIND.

TESTIMONY OF LOUIS E. PELLEW.

(Pages 574–590.)

Mr. Pellew stated that he was a druggist in Macon, Ga., and that his drug store was about a quarter of a mile from Judge Speer's residence. That Judge Speer traded at his store. That he had filled prescriptions containing cocaine for Judge Speer. Upon being questioned as to the number of times, he testified that he had furnished prescriptions containing cocaine "about once or twice during a year" for about 10 years. That the same prescription had been refilled time after time, only one prescription having been received. That the "usual quantity was about 3 per cent solution, sometimes one and sometimes two ounces." He stated that he could not recall sending the drug to the judge through the mails, but could not swear to it. That the prescription in question contained nothing but water and cocaine. That he could not remember what physician had prepared the prescription upon which this cocaine was furnished. That the orders for cocaine were always received over the telephone or by messenger.

On cross-examination Mr. Pellew stated that the physiological effect of cocaine upon the system was exciting. On redirect examination

Mr. Pellew stated that he had declined to answer questions propounded by the examiner, Mr. Lewis, on this subject, as he understood there was a law against selling the drug in this manner and that to answer might incriminate himself.

In answer to questions, Mr. Pellew testified that he had received two appointments from the court as receiver for bankruptcy estates. That neither of the bankruptcy estates were in the city of Macon, Ga., and that the assets in each instance amounted to approximately $4,000. One of the estates was at Eastman, Ga., and the other at Fitzgerald, Ga.; Eastman being 40 or 50 miles distant from Macon and Fitzgerald 75 or 80 miles distant.

TESTIMONY OF ALEXANDER AKERMAN.

(Pages 1058–1059.)

On this subject Mr. Akerman testified that he had observed that at times Judge Speer while on the bench would be exceedingly restless and irritable and his rulings without the usual force and lucidness, and that he would leave the bench for a 10-minute recess, after which he would return as calm as a man could possibly be and start on with the case with a great deal of old-time fire and vigor; that he had described these conditions to certain physicians at different times, and these physicians all stated it was evidence of some drug habit.

TESTIMONY OF GEORGE E. WHITE.

(Pages 1595–1598.)

Mr. White identified his statement given to the examiner of the Department of Justice with regard to his close and intimate relations with Judge Speer and, in answer to questions from the chairman, admitted having taken numerous trips to different parts of the country with Judge Speer. He also stated that in all his experiences with Judge Speer he had never seen the judge take an opiate of any kind or have one in his possession.

TESTIMONY OF DR. W. J. LITTLE.

(Pages 607–615.)

Dr. Little testified that he had attended Judge Speer in a professional capacity. He stated that he had never prescribed the use of cocaine for Judge Speer and had never given him doses of that drug; that he had used a hypodermic injection of morphine on probably two occasions in treating Judge Speer. Dr. Little denied that he had ever made any statement to anyone to the effect that Judge Speer was affected by the use of cocaine. Dr. Little stated that he would not prescribe cocaine for hay fever, but that if it should be used it should be in the form of a spray solution. He stated also that Judge Speer was an unusually sensitive man, and also that his mental condition when he is well is superb, and when he is suffering pain he is inclined slightly to hysterical manifestations. In answer to question as to whether he had seen any diminution in the judge's mental vigor he stated, "No more than I could notice in any person's mind. He was suffering at the time with pain and severe nausea. Imme-

diately on recovery of that there are no aberrations, no delusions or illusions. It is simply the nervousness that comes from stomach trouble, what may be called dyspeptic nervousness. But I have never seen his mind involved in the least." He stated further that although he attended Judge Speer occasionally he did not consider himself his physician. On cross-examination, in response to the question from Judge Speer's counsel as to whether the use of a small solution of cocaine of the strength of 14 or 15 grains to the ounce, making about a 3 per cent solution, using 2 ounces of it a year, would be likely to produce what is known as the cocaine habit, Dr. Little replied that it would not. He also stated that from his observation of Judge Speer he had found no trace of anything like the cocaine habit. He stated that he considered that the swarthy complexion of Judge Speer came from a biliary stone.

Mr. Alexander Akerman testified that Judge Speer's conduct convinced him that he was subject to the use of some drug, and Mr. L. E. Pellew, druggist, testified that he had furnished Judge Speer with a cocaine solution either 1 or 2 ounces, once or twice each year during the past 10 years. Mr. Pellew appeared to be quite a willing witness when called by the committee, although he had declined to answer questions on this subject propounded by the examiner of the Department of Justice. It should be noted in this connection that Mr. Pellew has been appointed receiver in two bankruptcy cases by Judge Speer, and it is thought his testimony as to the amount of this drug furnished Judge Speer should be considered in the light of his personal interest. It is noted that Mr. George White, who is said by certain parties to have made statements relative to the use of this drug by Judge Speer denies that he ever made any such statements, and denies that he has any knowledge of such a habit on the part of the judge. It is also noted that Dr. W. J. Little testifies that he has no knowledge of such a habit on the part of the judge.

The evidence on this subject is conflicting, as Judge Speer denies that he is a user of drugs. The record is not such as would warrant the conclusion that Judge Speer is a habitual user of drugs.

ALLEGED IMPAIRED CONDITION OF JUDGE SPEER'S MIND.

(Pages 89–93.)

On this question Mr. John R. L. Smith stated in substance as follows:

That he has been practicing law in the southern district of Georgia since 1891, and is acquainted with Judge Speer; that on a certain occasion during the session of the district court at Macon, Judge Speer stated to him that he (the judge) wished to see him before he left the building; that he waited until the court adjourned, and then entered the judge's office, whereupon the judge, after walking up and down the room a few times, and stopping occasionally to look out of the window, said, "This is not exactly a judicial matter I want to see you about," and after walking back and forth again, the judge stated that he wanted to sell him a horse, to which he replied that he did not want to buy a horse, and was not able to have one, as it was too expensive. To this the judge replied that he would sell the horse very cheap, and after some argument stated that he did not

know that he (Smith) had changed his mind, because he had told him the other day that he wanted to buy a horse. Mr. Smith replied that he was mistaken about that, as he had not stated he wished to buy a horse. Upon being further questioned Mr. Smith replied that this conversation took place during the summer of 1913, and that during the conversation the judge offered to sell the horse for $200 or $250, and stated that it was worth about $750. Mr. Smith stated further that he had not spoken to the judge about a horse within five years. That during the conversation the judge appeared very much surprised that he did not wish to buy a horse.

In answer to questions as to the mental condition of Judge Speer, Mr. Smith replied that in his opinion Judge Speer's mind was impaired. Upon cross-examination Mr. Smith stated that Judge Speer's mind was not as quick as it formerly was, that his grasp was not as comprehensive; that formerly Judge Speer's mind was the best of any man he had had to deal with. Judge Speer's attorney then attempted to have Mr. Smith compare Judge Speer's mental ability with certain prominent Georgians, but was interrupted by the chairman of the committee. Mr. Smith then testified, on cross-examination, that he had been associated with Judge Speer for many years and had become well acquainted with him, but not intimate. In reply to further questions from Judge Speer's attorney as to the reason for the general attitude of the people toward Judge Speer and the unpopularity of his court, Mr. Smith replied, "My opinion is that it is because Judge Speer's career on the bench has been high-handed, domineering, somewhat untrammeled by law, characterized in a measure by favoritism to a few, and a correspondingly stern antipathy to another clique, which, like the dropping of the water on the stone, has gradually worn out the patience of the people." Mr. Smith stated further in response to questions that he thought Judge Speer should be taken out of the judiciary. The attorney for Judge Speer then presented a number of cases litigated in the southern district of Georgia to Mr. Smith and endeavored to have him affirm statements testified to by the attorney as to the action of Judge Speer in those cases. Mr. Smith appeared to have very little recollection of them, as he was not connected with them.

TESTIMONY OF ALEXANDER AKERMAN.

(Pages 1062–1063.)

Mr. Akerman stated that since 1907 Judge Speer at times had not been right mentally. He then cited several instances to show lapses of memory and loss of control on the part of Judge Speer, and stated he had gone to Mr. Morgan, Judge Speer's brother-in-law, his nearest relative, and suggested that he (Morgan) take the matter up with Mrs. Speer in an effort to get the judge away on a vacation in order that he might recover his mental balance.

TESTIMONY OF H. S. EDWARDS.

(Pages 1224–1249.)

Mr. Edwards stated that he was a resident of Macon, Ga., and had held the position of postmaster and custodian of the Federal Building for a number of years. Mr. Edwards identified a letter written to

Mr. A. C. Jenkins with regard to his connection with Judge Speer, and upon the request of the chairman read it into the record. This letter refers to the different controversies and unpleasant incidents between the Treasury Department and Judge Speer relative to the court quarters. Mr. Edwards states in it that he has long since come to regard Judge Speer as unfortunate and a fit subject for the rest cure and sanitarium. Also that Judge Speer, after selecting quarters a number of times and approving the arrangements in each case, declined to accept them after the Treasury Department had spent much time and money in preparing them. Mr. Edwards was then asked about a communication written by him to the Treasury Department during this series of controversies with Judge Speer, and identified the letter, which was marked Exhibit "H," and read it into the record.

* * * * * * *

Mr. Edwards stated this letter was an effort on his part to convey the truth in a small way, and there was nothing in it stated as a fact but what was true.

On cross-examination Mr. Edwards testified in response to questions that the letter which he read into the record was written to the Treasury Department in response to a request from the Supervising Architect to find a proper location for the judge's court. Mr. Edwards testified further that Judge Speer was subject to lapse of memory and upon being asked by Mr. Howard to explain then stated "these lapses of memory, which my friend Roland Ellis calls interregnums, I believe, are questions for physicians, not for philosophers; and stated further that a sound mind might be subject to involuntary suspension. Mr. Edwards went on to say that he did not mean to attack the mentality of Judge Speer particularly, that his trouble was spiritual, rather than mental; that he is decadent so far as the moral sensibilities are concerned." In further describing the mental condition of Judge Speer, Mr. Edwards stated "then, Mr. Howard, I will say this to you. There are two kinds of spirituality contemplated by modern philosophy, one known as constructive, the other destructive. Constructive spirituality embraces all those nobler emotions, which developed broaden and develop the character, and certainly the soul. Destructive spirituality embraces those emotions which we classify under jealousy, envy, malice, hatred, self-praise, love of praise, and desire for public approbation. Those cover destructive spirituality. They are fatal to the soul of any man who will entertain them long enough. I think they have Judge Speer in their grasp. That is my opinion of Judge Speer." Mr. Edwards further stated in response to questions that Judge Speer was a very able man, but that his habit of lapsing from mood to mood is attended with lapse of memory, and indecision from one side to the other.

The evidence on this subject, especially of Mr. Akerman, the United States attorney, and Mr. Edwards, the former postmaster and custodian at Macon, while not convincing, should be considered in the light of all the irregular conduct charged in the different cases mentioned by other witnesses under the different subjects, but the subcommittee must report that whatever Judge Speer's mental lapses may have been in the past, he certainly showed no signs of mental weakness during this investigation in the presence of the subcommittee.

ALLEGED ABUSE OF AUTHORITY IN TAKING OR CAUSING TO BE TAKEN MONEY FROM COURT FUNDS FOR PRIVATE USE.

TESTIMONY OF MR. W. E. SIMMONS.

(Pages 728–731.)

Mr. Simmons testified that during the years 1885 and 1886 he instituted a large number of suits in the United States court in the southern district of Georgia for various foreign corporations and deposited with the clerk of the court between $2,000 and $3,000 as security for costs in these cases. That owing to a ruling of Judge Speer contrary to the law as administered by the State courts it became necessary for him to dismiss all his cases in the southern district of Georgia; that he wired a local attorney at Macon requesting him to have the cases dismissed and received a telegram in reply to the effect that Judge Speer had refused to dismiss the cases. That he went to Savannah in person to dismiss the cases pending in that division, and went to the clerk's office to see about the dismissal of these cases, and that the clerk, Mr. Irwin, was present and advised him not to dismiss them, stating that Judge Speer had investigated the question and that it was now all right. He asked the clerk if the judge had directed him to make that statement, to which the clerk replied that he could not say that he had. Mr. Simmons then left the office of the clerk and in the hall met the marshal, Mr. Lamar, who also said to him, "Don't dismiss your cases down here. You are all right." Mr. Simmons asked him if he had been directed by the judge to make this statement, and Mr. Lamar replied, "I can't say that he did." And upon being asked if he could say that the judge did not tell him to make the statement Mr. Lamar replied, "Well, all I have to say is, you are all right." Mr. Simmons later went into court and asked for an order dismissing all his cases, and Judge Speer appealed to him not to dismiss them, and asked why he wanted to do so.

He states that upon being told that the reason was that he did not like the judge's opinion of the law, the judge replied, "You have no assurance that I will adhere to it." But upon being asked whether he could assure Mr. Simmons that he would not adhere to his former ruling, the judge stated he could make no assurance of that. Mr. Simmons states he then took the order dismissing the cases and went to the clerk of the court, Mr. H. H. King, for the unconsumed portion of his deposits for costs. He states Mr. King was much embarrassed and said, "Mr. Simmons, I haven't got the money." Upon being told that he ought to have the money, as it was a trust fund, Mr. King replied, "Judge Speer has it," and upon being further pressed for payment stated he could not pay it at that time. Mr. Simmons finally took his note for the money and received payment of it in installments. Mr. Simmons stated further that he understood Judge Speer had borrowed the money from the clerk and paid it back to the widow of Mr. King after his death. This, Mr. Simmons stated, was told him in conversation with a gentleman in Savannah.

In answer to questions as to his testimony on direct examination to the effect that he had understood that Mr. King, the former clerk of the court, had paid money to the widow of Mr. King, he stated that the statement had been made to him by some one in Savannah. Mr.

Simmons was asked to look at a note for $1,200, dated November 8, 1886, in favor of H. H. King, and given by Judge Speer, and also a draft in payment of the note in question, with interest amounting in all to $1,465.20, dated at Savannah, Ga., April 11, 1890, and signed by Charlton and Mackall. Mr. Simmons examined these papers, but stated he could not see that they had any connection with the money which he had paid to the clerk for court fees, and which Mr. H. H. King, clerk of the court, stated had been received by Judge Speer. Answering a question from one of Judge Speer's attorneys, Mr. Simmons stated that the deposits for costs were made by him to the clerk of the court, and that his testimony on the subject was as follows: "That this money was owing to me on account of deposits that I had made to cover advanced costs, and that when I asked for it the clerk did not have it and gave me the excuse for not having it that Judge Speer had the money and was using it," and that it was a trust fund, and Judge Speer had no business with it at all.

TESTIMONY OF MR. P. W. MELDRIM.

(Pages 1656-1661.)

Mr. Meldrim testified that he had been acquainted with the late H. H. King, former clerk of the United States court at Savannah and was quite friendly with him, and that so far as he had ever learned Mr. King was a man of limited means. That he frequently came to him (Meldrim) for his advice, and that in April, 1890, Mr. King came to him very much excited, and used strong language in reference to Judge Speer, and stated that he had let Judge Speer have court funds, and that a demand had been made upon him for the money and that he could not get it from Judge Speer. Mr. Meldrim told Mr. King that he would not have any trouble in getting his money, but did not mention that there was a statute on the subject, and suggested that he write a letter to Judge Speer stating he must have the money. In response to a question Mr. Meldrim stated that he referred to the Federal statute making it a misdemeanor for a judge of the United States court to take money out of the registry of the court. Mr. Meldrim went on to say that he told Mr. King to state in his letter to Judge Speer that the money had been taken out of the court funds, and demand having been made upon him the judge must get it. He stated further that on the 11th day of April, 1890, Mr. King returned to his office and said he had received on that day from W. W. Macall the money due from Judge Speer, amounting in all to $1,465.20, there being several years' interest due on the note. Mr. Meldrim testified further that he was positive as to his statements in this regard, as they were made from memoranda prepared at the time the incidents happened. He stated further that some time later than this Mr. W. W. Macall happened to be in his office and that he showed the memorandum of the statements made by Mr. King to him on account of Mr. Macall having made the payment for Judge Speer.

TESTIMONY OF MR. W. W. MACKALL.

(Pages 1734–1738.)

Mr. Mackall testified that he was an attorney at law at Savannah, Ga., and then produced copies of correspondence with Judge Speer dated in 1890 relative to the payment of the sum of $1,465.20 to Mr. H. H. King, the former clerk of the court at Savannah. This correspondence was a letter from Judge Speer to Mr. Mackall's firm requesting them to pay the money to Mr. King, dated April 10, 1890, and a letter from the firm of Charlton & Mackall to Judge Speer stating that the note of $1,200 dated August 5, 1886, and interest from that date to the time of payment amounting to $265.20 had been paid and a sight draft drawn upon the judge for the amount. Following this was a letter from Judge Speer acknowledging the receipt of the draft and stating he had paid it.

All of the witnesses testifying on this subject are of the highest character. It may be, though not clearly proven, that the note presented by Judge Speer was given to cover this money, as there is no conflict in dates, and it may be that it represented other money loaned by Mr. King. The fact that Judge Speer attempted to dissuade Mr. Simmons from dismissing his cases, and the further fact that no interest had been paid on the note mentioned during the four years it had been running, also the statement made by Mr. King to both Simmons and Meldrim that Judge Speer had this particular money, and the judge's action in telegraphing the arrangement for its return, all appear to connect the judge with borrowing court funds from the clerk, though not proven that the judge knew it.

It may have been that Mr. King loaned the judge this money from the court funds, though this is not satisfactorily proven, and certainly in view of the fact that Mr. King is dead, there is no legal proof that the judge ever knew that the money borrowed was court funds. In addition to this, Judge Speer emphatically denies that he knew the money was court funds.

ALLEGED IMPROPER USE OF RAILWAY FACILITIES.

TESTIMONY OF MR. A. R. LAWTON.

(Pages 1740–1745.)

Mr. Lawton testified that his firm was general counsel for the Georgia Central Railway Co. and had represented that company since the early 80's; that the company had regularly furnished free transportation to Judge Speer for his horses, vehicles, and members of his family; that the transportation was usually from Macon to Savannah and back, from Macon to Albany and back, from Macon to Augusta and back, and from Macon to Mount Airy, Ga., and back; that the Mount Airy transportation went over the Central of Georgia to Atlanta, and they arranged with the Southern Railway to take it from that point to Mount Airy; that this free transportation was discontinued upon the passage of the Hepburn Act. Mr. Lawton testified that no other persons, not even officials of the railroad company, had ever received free transportation of freight, and that after considerable discussion among the officials of the company it

was decided to discontinue this special privilege to Judge Speer, and a letter (Record, p. 1742) was addressed to him on December 31, 1906, politely informing him that the courtesy would be no longer extended to him. To this he received the following reply dated January 5, 1907:

DEAR SIR: Your letter of the 31st ultimo received. Since I had no application whatever pending for what you state is the exclusive privilege which you have in advance of writing me instructed the officers of the Central of Georgia Railway to refuse me, I have only to acknowledge the receipt of your communication and reciprocate your seasonable good wishes.

Very respectfully,

EMORY SPEER.

Mr. Lawton states that in addition to this free transportation of freight, regular passes were furnished to Judge Speer for transportation of himself and family, and that no one in the State of Georgia had ever enjoyed the privilege of having horses or vehicles and other goods sent free of charge except Judge Speer.

Mr. Lawton produced telegrams and letters relating to the use of the Georgia Central Railroad and read them into the record as follows: (Record, pp. 1749–1753.)

SAVANNAH, GA., *April 1, 1905.*

Mr. T. W. GLAZE, *Macon, Ga.*

Bill Judge Speer's horses, vehicles, and attendants free as usual.

W. E. ESTES.

The next is a letter from F. F. Brown, commercial agent at Augusta, April 12, 1905, to Mr. Winburn, second vice president.

Yours of April 11th.

The last time Judge Speer's horses and man moved, his man was handled on a ticket, the same as was done this time. When Judge Speer's court official came to our office to see about the movement, it was in the afternoon, and I talked with the local agent to see if it could be arranged for the man to go on transportation with the horse, and it was his idea that it could not, that he would have to have a ticket. I wired Mr. Estes regarding the matter, but did not suppose he would include the man on the waybill; that is why I issued the ticket referred to.

Very truly,

F. F. BROWN,
Commercial Agent.

The next is from Mr. Winburn, second vice president, to Maj Hanson, president, November 29, 1906; subject "freight rates." "On shipment of horses, traps, and household goods account Hon. Emory Speer."

DEAR SIR: I invite your attention to attached correspondence with reference to the freight charges on one horse from Macon to Augusta, account Judge Emory Speer.

As you have advised, we have heretofore been transporting Judge Speer's horses, traps, and household goods without charge. We will not be permitted to do so under the law after the 1st of January on interstate shipments. I would like to know if you wish the practice continued on purely State shipments, and, if not, whether you consider it advisable for us to give Judge Speer any notice of the change in our practice in this particular.

Yours, truly,

W. A. WINBURN,
Second Vice President.

MACON, GA., *November 30, 1906.*

W. A. WINBURN, Esq.,
Second Vice President, Savannah, Ga.

DEAR SIR: I have yours of the 29th with reference to shipment of horses, traps, and household goods account Hon. Emory Speer. I hardly know what to say in reply

to your letter. I have never had anything of the kind handled by the steamship or railway companies since I have been connected with them on my personal account without paying tariff freight rates, and there is no reason why we should transport this property for Judge Speer when like service is not performed for the officials of the railway company.

I would like for you to confer with Col. Lawton with respect to the matter, and give me the result of your joint advice before passing upon the question finally.

Yours, very truly,

J. F. HANSON,
President.

Attached is a memorandum:

A. R. L.:
This should have gone to you in the first instance. What do you say? W. A. W.

The next is a memorandum signed "A. R. L."

Memorandum for Mr. Winburn:

All my inclination is to say that we should stop it and so notify him. We could very greatly strengthen our case, however, if we could state as a reason for it that we are applying the provisions of the Hepburn law to interstate transportation of passengers and that it would not be consistent not to apply it to intrastate transportation of freight. We will not be doing this before January 1, and it is now uncertain whether we will be doing it then. I think we had better wait awhile and note developments. I should like to talk to you about it.

A. R. L.

The next is from Mr. Winburn, second vice president, to Mr. Carlisle, commercial agent at Macon, dated January 2, 1907:

DEAR SIR: Regarding transportation of Judge Speer's live stock and other effects:

Col. Lawton has written Judge Speer a letter advising him that we will not be at libery to continue to perform this service free after the 1st of January, 1907.

Advise the Macon agent verbally of what has been done, and destroy this letter after it has served your purpose, so it will not be in your open records.

Yours, truly,

W. A. WINBURN,
Second Vice President.

Mr. Lawton testified that Judge Speer continued to use free passes for his family and to obtain free transportation for his horses, vehicles, and attendants over the lines of the Georgia Central Railway during the time it was in the hands of his receiver. On cross-examination Mr. Lawton stated that freight transportation for horses, etc., was not continued voluntarily, but by request.

TESTIMONY OF MR. W. V. DAVIS.

(Page 1794.)

Mr. Davis testified that while he was employed by the firm of Charlton, Mackall & Anderson, who were general counsel for the Georgia & Alabama Railway, he saw correspondence with Judge Speer in which the judge returned a pass sent to him by the railway company and asked that his wife be included in the pass.

The evidence on this subject shows that Judge Speer made a practice of using the facilities of the railroads of his district for the transportation of freight free of charge, and that many carloads of freight were handled for him in this manner by the Central of Georgia and the Southern Railway. Special attention is invited to the fourteen letters taken from the records of the Southern Railway at Atlanta which are marked No. 27. These exhibits show letters from the officials of the Southern Railway to Judge Speer and from Judge Speer

to these parties relative to the handling of this freight free of charge. Attention is especially invited to the letter dated November 27, 1902, to Judge Speer from Mr. J. S. B. Thompson, one of the officials of the Southern Railway, as follows:

Judge EMORY SPEER, *Macon, Ga.*

MY DEAR SIR: Your letter of the 25th is received this morning, and I have telegraphed our superintendent asking him to place two cars at Mount Airy as soon as possible, and later will take pleasure in arranging for the transportation of same from Mount Airy to Macon.

Yours, very truly.

This correspondence shows that all of these carloads of freight were handled free of charge, and also that this was a special privilege enjoyed by Judge Speer alone.

ALLEGED GENERAL UNLAWFUL AND OPPRESSIVE CONDUCT.

ARBITRARY AND OPPRESSIVE CONDUCT IN RE UNITED STATES v. CRAWLEY & McCLELLAN.

TESTIMONY OF MR. A. A. LAWRENCE.

(Pages 1449–1461.)

Mr. Lawrence stated that in the peonage cases of United States *v.* Crawley & McClellan he was employed as counsel for the defendants and was associated in the defense with Mr. W. M. Toomer; that during this trial Judge Speer exerted every effort to have the defendants plead guilty, and that as he considered them clearly not guilty he resisted all such efforts; that Mr. Talley, then Judge Speer's stenographer, had approached Mr. Lee Crawley, a brother of one of the defendants, and intimated that they had better plead guilty, and if they would do so the only penalty would be a fine of $500, and they would be given until fall to pay it; that this proposition was turned down and the case proceeded, and after the evidence was in Judge Speer sent for Mr. Toomer and stated they had better enter a plea of guilty, and that the penalty in that event would be a $500 fine. That upon being asked by Mr. Toomer what the penalty would be in case they did not plead guilty and were convicted by the jury, the Judge replied with a flash in his eye, "Well, I will do my duty;" that at the end of the trial the defense moved for a verdict on the ground that no case had been made out, and that in overruling this motion Judge Speer, in the presence of the jury, delivered the worst excoriation of the defense he had ever heard in his life, stating that the motion was monstrous and wound up with the assertion that it was the last motion in the world he would grant; that this language in the presence of the jury so terrified the defendants and some of the defendants' counsel that a consultation was held with regard to entering a plea of guilty, but that he and some of the counsel did not think the jury was one which could be coerced; that Judge Speer's bitter denunciation was so severe that he did not think any of the defendants slept that night; that one of the defendants' mother was suffering with heart disease and that he feared if he was sentenced to the penitentiary she would drop dead; and that after consultation these young men agreed to accept Judge Speer's terms and enter a plea of guilty, with the distinct assurance that

only a fine of $500 would be imposed; that he and his partner, Mr. Osborne, were so incensed at this injustice to their clients that they declined to be parties to such a transaction and rose in court and had their names stricken from the record as counsel before the plea of guilty was entered; that these young men and their attorneys were so suspicious of Judge Speer's promise as to imposing the fine in case of plea of guilty, that they had their uncle, Mr. John McDonald, to accompany their counsel to the judge's chambers in order to hear his assurance when the surrender was made.

Mr. Lawrence stated further that during the trial of this case Mr. Edward McRae, a very fine gentleman and prominent citizen of southern Georgia, was on the stand, and Judge Speer turned to him and said, "You have been convicted, haven't you, in this court, of peonage? You plead guilty?" to which Mr. McRae replied, "Yes;" and Judge Speer then said, "I could have given you 65 years if I had seen fit, couldn't I?" There was a suspended sentence in this case, and Mr. Lawrence states this gloating of Judge Speer was the cruelest exhibition that he had ever seen in a courthouse of a manifestation of power; that this took place in the presence of the jury. Mr. Lawrence then testified that the defendants in this case were men of good character, one of them being a prominent attorney and the other the sheriff of Ware County and that there was no case against them.

TESTIMONY OF MR. JOHN C. M'DONALD.

(Pages 2038–2050.)

Mr. McDonald gave his profession as attorney and stated that he was judge of the State court at Waycross, Ga.; that he recalled the case of United States *v.* Crawley & McClellan; that he was connected with it only in an advisory capacity; that during the trial there had been considerable talk to the effect that Judge Speer was trying to get the defendants to plead guilty and that Mr. Akerman informed Mr. Toomer, the chief counsel for the defendant, that Judge Speer wished to see him in his chambers; that when court adjourned Mr. Toomer went to the judge's chambers, consulted with him and returned and reported to the other counsel for the defendants that the judge had advised the defendants to plead guilty and that it would be to their interst to do so; later in the evening Mr. Toomer had another interview with Judge Speer and again returned with the report that if the defendants would plead guilty they would receive only a nominal fine. That all of the attorneys were opposed to such a plea, as they believed the defendants were not guilty. That at the conclusion of the Government's case Mr. Osborne, of counsel for the defendants, wished to make a motion to direct a verdict and requested the judge to have the jury retire in order that they might not hear the argument on the question, but that the judge refused to have the jury retire, stating, "We have a very intelligent jury, men of a high order of intellect, and I see no reason why they should be retired." Mr. Osborne then submitted and argued his motion for direction of a verdict, and Judge Speer rendered his decision on it in the presence of the jury and intimated that Mr. Osborne was too good a lawyer to take such a position, and stated that under the evidence the defendants were clearly guilty and ought to be convicted and punished.

Upon being asked to describe Judge Speer's manner in delivering this opinion Mr. McDonald stated, "You know Judge Speer is one of those men that can look right through you. He can look at you and scare you out of countenance when he wants to do it, and on the other hand when he wants to do so he can almost win you by smiling at you. That is my impression of the judge, and that was one of the occasions when he looked like he wanted to bore a hole through Mr. Osborne with his stares," and also cast similar looks at the defendants. That his expression indicated, "Now, you have either got to plead guilty or I am going to push a conviction on you." This was the impression created on the minds of everybody who heard him, whether they were interested or not; that this language had a very decided effect upon the defense and that they retired and had a conference with their attorneys, and after another meeting the next morning it was decided to enter a plea of guilty as they feared they would be railroaded to the penitentiary, which might have resulted in the death of the mother and sister of one of the defendants who were in very feeble health. Mr. McDonald stated that these defendants did not have a fair and impartial trial and their lawyers did not have a fair opportunity to try the case. In answer to a question with regard to the arrangements made for entering the plea of guilty Mr. McDonald stated that for fear of some "slip up" it was arranged for some one connected with the defendants to attend the conference with Judge Speer and witness his statements with regard to the penalty to be imposed in case the defendants plead guilty; that as he (McDonald) was an uncle of one of the defendants he consented to be present at the conference with Judge Speer; that when he accompanied Mr. Toomer to Judge Speer's chamber Mr. Toomer said to the judge, "Well, Judge, upon reflection the defendants have decided to accept your terms and enter a plea of guilty. I do not think they are guilty, but we are going to do this in order to end the matter.

* * * * * * *

Mr. McDonald, who is a relative of one of the defendants, has come here with me for you to make a statement to him of what you are willing to do as you did to me." That Judge Speer thereupon made the statement that he would impose a minimum fine in case the plea of guilty was made. Mr. McDonald also stated that before this plea was made in open court Mr. Osborne arose and withdrew the name of his firm from the case.

TESTIMONY OF MR. W. W. OSBORNE.

(Pages 2080–2103.)

Mr. Osborne testified that he was of counsel for the defense in this case and proceeded in substance as follows: McClellan was sheriff of the county of Ware and W. L. Crawley was a young lawyer residing in Waycross, Ga., a man of fine character and from one of the best families in the county. These men were indicted one spring and brought to trial nearly a year later the following spring. The evidence showed that two incorrigible negro boys residing in Ware County had been arrested at the instance of their grandfather, charged with theft, convicted, fined about $30 and costs, or in lieu thereof six months in jail. There was evidence that the grandfather took this course to get

the boys out of the community, as he could do nothing with them and they were a menace to the neighbors. After the trial these boys requested Mr. Crawley, who had represented them, to write to one F. McRae, requesting him to come to Waycross and pay their fine on the understanding that they would go to his farm and work until he had been reimbursed. It developed later, although the sheriff and this attorney did not know it, that the State judge in sentencing these boys had not imposed the usual fine, but had only imposed a six months' sentence. Mr. Crawley wrote the letter to Mr. McRae for the boys and he came to Waycross, paid the fine and attorney's fees, and took the boys to his farm. The charge against McClellan, the sheriff, and Crawley, the attorney, was that they conspired with McRae to have the boys taken away and held in peonage.

In response to a question at this point as to whether any evidence to this effect was shown at the trial of Crawley and McClellan, Mr. Osborne stated they never got to that point—that the judge absolutely coerced the men into the plea of guilty before any evidence was put in. Mr. Osborne stated there was absolutely no evidence upon which Crawley and McClellan could have been convicted—that they had no connection whatever with keeping the darkies in peonage, and that Crawley merely wrote the letter at the request of the darkies whom he had defended, and that the sheriff merely liberated the boys upon the payment of the fine which he had understood had been imposed. Mr. Osborne then proceeded to detail the circumstances by which these defendants were forced to plead guilty and corroborated the statements made by Mr. Lawrence and Mr. McDonald. With reference to the testimony given by Mr. Toomer on this subject Mr. Osborne stated that notwithstanding Mr. Toomer's present recollection he stated at the time that from Judge Speer's manner in making the proposition as to what he would do in case these defendants plead guilty it was evident that he meant their punishment would be greater in the event of conviction than in the event they plead guilty and that he meant them to go to the penitentiary. He stated that there was absolutely no doubt that this plea was coerced by Judge Speer and was entered on account of the fear the men had that he would send them to the penitentiary. Mr. Osborne also testified that these defendants had been out on bond for a year and a half after indictment, but when the trial began the judge had them arrested and kept in the custody of the marshal constantly. That when the Government's case was in he (Osborne) made a motion to direct a verdict, which was overruled by the judge in the presence of the jury in a fiery stump speech framed in such language as to absolutely terrorize the two defendants. He also testified that the judge reflected upon his integrity in overruling this motion, stating that he was too good a lawyer to make such a motion in good faith, and that the judge did not confine himself to the case, "but delivered an unwarranted and gratuitous insult to me in open court."

Mr. Osborne then recited the incidents leading up to the plea of guilty and his action in striking the name of his firm from the case before the plea was entered. He also corroborated the statements mentioned by Gen. Meldrim relative to the alleged cruel manner in which Judge Speer questioned Mr. McRae, a witness, forcing him to answer questions as to whether he had plead guilty, and whether he could have sentenced him to 65 years in the penitentiary, in the

affirmative. There was a suspended sentence hanging over this witness, and the judge concluded by saying, "Well, you had better be very careful about what you say here." And Mr. Osborne states that the witness after that was no good for the defense. He then testified as to conversations with members of the jury who sat on this case, all of whom stated to him at different times after the trial that they would never have convicted these defendants if the case had reached them.

TESTIMONY OF MR. J. L. CRAWLEY.

(Pages 2108–2117.)

Mr. Crawley stated he was an attorney by profession, at present being a member of the Georgia House of Representatives; that he is a brother of one of the defendants in this case. Mr. Crawley testified he had made a statement with regard to the above case for use in the investigation, and he was requested to read it into the record, which was done (Record, p. 2109). The substance of the statement mentioned is as follows: Mr. Crawley was a law partner of his brother, one of the defendants, and was intimately acquainted with Mr. McClellan, the other defendant, and was positive that these men were not guilty of peonage. He then proceeds to give the details relative to the offense charged, and the conduct of Judge Speer, and his testimony corroborated in every way that given by Messrs. A. A. Lawrence, W. W. Osborne, and Judge McDonald. He states, positively, that he was approached by Mr. Talley, the Judge's stenographer, who informed him that if the defendants would plead guilty they would be let off with a fine, while if they refused to plead guilty and were convicted it would go exceedingly hard with them; also that Judge Speer went so far as to dictate a formal order which would be entered in case the plea of guilty was made.

TESTIMONY OF MR. W. M. TOOMER.

(Pages 1707–1727.)

Mr. Toomer testified that he was an attorney by profession and was employed by the defense in this case. That the defendants, Crawley and McClellan, were indicted for peonage, the former being an attorney and the latter sheriff of his county; the charge being that these men had conspired to have darkies who had been sentenced to the county works released upon the payment of certain sums and taken to a plantation, where they were forced to work out the advances made to them. That numerous demurrers were made and overruled in the case, and when it came up for trial a number of other attorneys were associated with him, Messrs. Osborne and Lawrence, of Savannah, being among them. That when the Government's case was in the attorneys were of the opinion that it had failed to make a case, and a motion was made to the judge to direct a verdict, but the motion was overruled by the judge. That the court then adjourned and during the evening Mr. Akerman, the district attorney, informed him that the judge wished to confer with him in his chambers; that he went in and found the judge and the stenographer present, and the judge stated to him that if the plea of not guilty should be withdrawn and a plea of guilty substituted the

defendants would be let off with a minimum fine and a portion of that suspended; that he propounded the question to the judge as to whether he would send these men to prison if they were convicted by the jury, and the judge replied, "Mr. Toomer, I will simply do my duty." Mr. Toomer further stated that he did not get the impression that the judge meant to be severe on his clients if they failed to plead guilty. He stated further that the sentiments expressed by the judge in overruling the motion to direct a verdict had taken the life out of his clients and they and some of their friends got the impression from the utterances made by the judge that all sorts of things might happen if the young men were convicted, but that he did not get any such impression himself. Mr. Toomer went on to say that after a long conference the defendants decided to plead guilty, although he and the other attorneys were certain no case had been made against them and advised them to stand and fight. Mr. Toomer also stated that in his opinion his clients were not guilty of peonage. In answer to questions as to his opinion of the reasons for the efforts of Judge Speer to have these defendants plead guilty in view of his statement that he did not think them guilty and that he did not believe Judge Speer intended to coerce the plea of guilty, Mr. Toomer was unable to offer any explanation.

STATEMENT OF HON. JOHN W. BENNETT.

Mr. Bennett has written a letter to the chairman of the subcommittee in which he states the judge used the following language in the presence of the jury in overruling the demurrer filed by the defendants: "That a chairman of a penitentiary committee of the Georgia senate appeared for the prisoners; that a member of the House Judiciary Committee in Congress from the district of the prisoners contributed a brief in their behalf; that a solicitor general of the State court in their judicial district, charged with the prosecution of such offenses under the State law, sat with the prisoners and their counsel during the hearing—taken altogether is somewhat persuasive of the conclusion that if there is no system of peonage de jure to which the statute applies, there is yet a de facto system of some equivalent sort, which has evoked the liveliest apprehensions of those who participate in its operation and emoluments, and of others whose sentiments toward it are not wholly antipathetic." Mr. Bennett further states that this was a voluntary insult offered by the judge under the cloak of his judicial robe and that had it been offered on the streets it would have been promptly resented. Also, that it was an effort on the part of the judge to stampede the defendant's counsel, in order to force them to plead guilty. This case is reported in the Fed. Rep. 127, p. 971. The letter of Mr. Bennett will be found marked as Exhibit 28.

The evidence on this subject shows that Judge Speer used every influence within his control to induce the defendants to plead guilty to the charge of peonage, when as a matter of fact the case made out against them was doubtful. The gentlemen giving this testimony, Messrs. Lawrence, Osborne, Crawley, and Judge McDonald, are men of high standing, and taken in connection with other actions of Judge Speer shown during this investigation, there is no doubt that his conduct in this case was unjudicial if not oppressive.

The conflicting testimony of Mr. Toomer is given by one who had not resided in the judicial district for eight years.

Judge Speer denies that his conduct in this case was oppressive or improper.

In connection with this denial the statements of Messrs. Crawley, Osborne, and Lawrence, marked as Exhibits Nos. 28–A, 28–B, and 28–C, should be read.

TESTIMONY OF W. W. OSBORNE.

(Pages 2072–2080.)

In answer to questions as to cases in which parties were practically denied the representation of counsel by Judge Speer, Mr. Osborne cited the case of Thomas *v.* A. C. L. Railroad, in which Gen. P. W. Meldrim represented the railroad company. This was a damage suit brought by Mrs. Thomas to recover damages for the loss of her son, who was killed while crossing the tracks of the railroad in the city of Savannah. Mr. Osborne's firm represented the plaintiff. The relations between Judge Speer and Gen. Meldrim were known to be strained. Mr. Osborne produced a witness for the plaintiff and after examining him turned him over to Gen. Meldrim for cross-examination, who proceeded by a proper line of questions to cross-examine. The questions were perfectly proper on cross-examination, but while the examination was at its height Judge Speer, on his own motion objected to the questions upon the ground that they were leading, and after a colloquy between Judge Speer and Gen. Meldrim, the judge turned to Mr. Osborne and remarked that he noticed he (Osborne) had interposed no objections to the line of questioning pursued by Gen. Meldrim, and that if counsel did not object he saw no reason why he should. This was said inquiringly, and the judge paused for a response. Mr. Osborne found the incident embarrassing, as any tyro in the law would have known the judge was wrong, and that if he had agreed he would have stultified himself, but he made no response and after waiting long enough to make the situation awkward Judge Speer allowed Gen. Meldrim to proceed. Mr. Osborne stated the position of the judge would have been recognized as erroneous by a 10-day law student, and that he has always felt that the judge's action was due to an effort to vent his spite on an attorney against whom he had a grudge, though he had to prostitute justice to do it. He stated further that it is impossible to have a fair and impartial trial before Judge Speer if there is any hostility on the part of the judge toward either attorney, and that his motives in such cases are judicially corrupt. Mr. Osborne stated that he made a practice of explaining to prospective clients that to employ him might prejudice his case with Judge Speer.

Mr. Osborne next detailed what he terms the unfair and unjudicial manner in which Judge Speer conducted the trial in the Greene and Gaynor case (Record page 2079). He stated that it is impossible to describe the manner of the judge fully, but that when you leave the court room you feel that you are not leaving a place of justice whether you win or lose.

ALLEGED IMPROPER CONDUCT IN RE U. S. v. A. C. L. RAILROAD.

TESTIMONY OF STANLEY S. BENNETT.

(Pages 2213–2242.)

Mr. Bennett gave his occupation as attorney and stated he resided at Quitman, Ga.; that he was employed in May, 1910, to represent the defendants in the case of U. S. *v.* A. C. L. Railroad Co. in a suit under the safety appliance act, and that he had associated Mr. J. N. Talley with him; that the district attorney, Mr. Storrs, had called upon the defendants to produce certain papers as evidence in the case and that when the trial commenced the defense stated to the court that they did not recognize the right of the Government attorney to call upon them to produce evidence to convict themselves, and that they thought the proper way to proceed was for the district attorney to file a petition, and for the court to decide upon the hearing whether the evidence was material and past such order as he saw fit; that Judge Speer then put the railroad division superintendent, Mr. McRainey, upon the stand and asked him if he had the papers in question, and was told that he had not, but that they were in the posession of the railroad's attorney; that the judge then made a speech with regard to the law protecting the people of all classes and stated the statistics show more people were killed by railroads in the past year than had been killed in the three bloody days of the Battle of Gettysburg, etc.; that the judge then ordered the district attorney to prepare a rule against the railway company to show cause the next morning why they should not produce the papers or be considered in contempt; that the next morning when court convened Judge Speer asked Mr. Talley, who was of counsel for the railway company, if he had the papers, to which Mr. Talley replied that they had prepared an answer to the rule nisi issued, and would be glad if the court would have a hearing on it, to which the judge replied that he had not answered his question, and again asking him if he had the papers; that Mr. Talley again tried to evade and stated the papers could be produced when the court passed an order requiring their production; that the judge again stated Mr. Talley had not answered his question and said he wanted to know where those papers were; that the situation became very acute and that it looked as if the counsel would have to go to jail, and that Mr. Talley finally replied that he had the papers with him; that the judge then said, "Mr. Talley, you may turn those papers over to the district attorney," to which Mr. Talley replied, "Does your Honor order us to do that?" And the judge said, "Mr. Talley, are you not a practitioner at this bar?" * * * When you became such did not you take a solemn oath? Did that make you an officer of this court?

To all of which Mr. Talley replied in the affirmative, and Judge Speer then said, "I direct you as an officer of this court that you turn these papers over to the district attorney." Mr. Bennett states he "thought it was time to turn" and so advised Mr. Talley, and the papers were delivered to the district attorney; that Mr. Talley then asked the judge to note an exception to the ruling, and the judge replied, "What ruling?" That Mr. Talley explained "Your honor has directed and ordered us to turn these papers over to the district attorney," and the judge replied, "I didn't do anything of the kind."

Mr. Bennett states he and the other counsel were simply astounded at this statement, and that Mr. Talley stated to the court, "Your honor passed a rule nisi yesterday, and we came here in response to that ruling, and your honor would not hear us in regard to it and simply directed us to turn these papers over." That the Judge smiled and said, "You have reference to the rule nisi that the court passed yesterday morning." And Mr. Talley replied, "Yes"; that Judge Speer then turned to the stenographer and said, "Mr. Stenographer, take this down, 'The court on yesterday having issued a rule nisi against the Atlantic Coast Line to show cause why it should not produce certain papers in this case, and the defendant, by its attorneys, having come into court this morning and voluntarily produced the papers, the rule is dismissed, as it calls for no order on it.'" That the case proceeded, and the judge directed a verdict against the defendants; that he thought he had been treated unfairly, and that shortly after he left the court room the foreman of the jury came to him and said that he did not wish to sign that verdict, and that if it had been left to them (the jury), they would have found a verdict in favor of the Atlantic Coast Line; that the order dictated by Judge Speer stating that the attorneys had produced the papers voluntarily did not speak the truth; also, that he was denied the right of presenting the facts to the jury.

Mr. Bennett testified, in response to questions, that they did not appeal the case as they had nothing to appeal on, as the judge had made the record show that they had voluntarily produced the papers, which was not the truth.

TESTIMONY OF L. W. BRANCH.

(Pages 2243–1252.)

Mr. Branch testified that he is an attorney and resides at Quitman, Ga., and is a partner of Mr. Stanley S. Bennett, who has already testified on this subject. Mr. Branch corroborated all the statements made by Mr. Bennett, and practically duplicated his testimony, stating that the statement dictated by Judge Speer to his stenographer, to the effect that the papers had been produced voluntarily by the attorneys for the railroad, was not true; that the stenographic report produced by the attorneys of Judge Speer was accurate up to a certain point, but did not contain all of the proceedings had on account of which complaint is made.

The evidence in this case tends to show that Judge Speer made an untrue record by dictating to his stenographer an order which misstated the facts, and which prevented the defendants from reviewing his conduct in the case upon appeal.

It is true that Judge Speer denies the statement made by the witnesses in this case, and the issue of veracity is direct. The judge produced a copy of what purported to be a stenographer's report of these proceedings, but as this stenographer was his private secretary, and as these notes were not transcribed until the necessity for them in rebutting the testimony of witnesses in the case arose, it is thought they should be considered merely as a part of Judge Speer's denial of the conduct charged.

The subcommittee can not say that Judge Speer's action in this case was corrupt, but it is unfortunate that any United States judge

should have failed to make a more faithful statement of the facts leading up to the production of the papers in the case.

TESTIMONY OF GEORGE S. MURPHY.

(Pages 2120–2138.)

Mr. Murphy testified he was a merchant and that his home was at Augusta, Ga.; that in the year 1910, he was sued by Spring & Co., of New York, on an account growing out of brokerage transactions; that in this case he was put to the very heavy expense of going to Mount Airy with his witnesses for a hearing; that the complainants against him had 10 or 12 witnesses present and that he had a number of witnesses and much documentary evidence, and that when the case opened, one witness for the complainant had been on the stand about 20 minutes and during which time the judge displayed much impatience and asked questions about the length of the case, and then, "drew himself up and stated that he would render a verdict against the defendant for the whole account, with interest and costs from date amounting to $15,000 or $20,000;" that his attorneys had not been allowed to present one scintilla of evidence and that nothing was before the court except his plea; that his attorneys urged that they be allowed to make a defense, but were denied that right; that the judge refused to allow them to introduce a single witness or any evidence whatever and would not hear the case; that the judgment he rendered was so contrary to justice and common sense that even the opposing counsel in coming from the court room stated that no issues had been tried; that the attorneys said their only recourse was by appealing to the circuit court of appeals and that the court of appeals reversed Judge Speer after a hearing of not more than twenty or thirty minutes; that the case was sent back for a new trial but that on account of Judge Speer's actions in the first trial and his knowledge of the judge, he knew it would be useless to try the case a second time before him, and that, therefore, he compromised it; that this action on the part of Judge Speer resulted in heavy loss to him and that he accepted the compromise for absolutely no other reason than to get out of Judge Speer's court; that his attorneys advised him he had a conclusive and absolute defense, but that Judge Speer "has the most insidious manner in charging a jury away from you, that you have ever seen in your life." (See volume 200, Circuit Court of Appeals, p. 372.)

Mr. Murphy testified that the people of the district generally regarded Judge Speer's court with fear and trembling and that the judge's manner in holding court is arbitrary, dictatorial, and oppressive; that the jurors and attaches and counsel go around on tiptoe and are actually afraid to draw a long breath.

The argument of the judge, that Mr. Murphy was engaged in "gambling speculation," does not appear to present any very good reason for entirely refusing to hear his case, and this argument is effectually answered by the action of the circuit court of Appeals in reversing him and sending the case back for hearing.

PEONAGE CASES, ETC.

TESTIMONY OF MR. THOMAS S. FELDER.

(Pages 1823–1848.)

Mr. Felder stated that he was an attorney by profession and was holding the position of attorney general in the State of Georgia; that in the year 1910 he had represented the defendants in the case of United States *v.* Laidler Branen and John H. Branen; that he thought these defendants were entitled to a fair and impartial trial, and that the judge took the case away from the Government attorney, Mr. Akerman, and directed the prosecution from the bench; that when the Government finished its case he (Felder) made a motion to direct a verdict, and that the judge in overruling the motion practically directed a verdict of guilty in the case in the presence of the jury.

Mr. Felder also testified that in this case he requested the judge to have the jury retire during the argument on the motion to direct a verdict, but that the judge refused his request.

Also that about one year later he was employed to represent the defendants in another peonage case entitled United States *v.* Chancey et al., and that when these men came to him he told them that an effort would be made by the judge to coerce them into pleading guilty, and that he required a promise from them that they would not plead guilty before agreeing to represent them; that after investigating the facts he was convinced that these men were not guilty and did his best to clear them; that Judge Speer at the outset of the trial took charge of the prosecution and assisted the district attorney, in his statement of the case to the jury, by questions and supplementing his remarks; that during the trial of this case he had a number of character witnesses present, and that the judge inquired what that great array of people was for, and upon being informed they were character witnesses limited the defense to two or three such witnesses; that nevertheless he kept the witnesses at court, and the judge had them put in a hot, uncomfortable room without chairs, and kept them locked up as if they had committed some crime; that the trial lasted nearly a week, and that one of these witnesses was nearly 80 years old, and some of them kept sending notes to the effect that they could not get chairs to sit on, and that he (Felder) would send the notes up to the judge, who would ignore them. He stated further that when the Government closed its case he made the usual motion to direct a verdict and sat down; and that the judge asked him if he cared to argue the matter, to which he replied in the negative; that the judge then said that he would like to hear the motion argued and that he again asked to be excused; that the judge then said, "Mr. Felder, I would be glad for you to do so." He stated that he understood that the judge merely wanted him to argue the motion in order to get ammunition with which to overrule, and that everybody was convinced that he was trying to convict the defendants, but that in response to Judge Speer's request he rose and made a short argument; that the judge took a recess and came back with a typewritten order overruling the motion, condemning the clients, dissertating upon the sweetness of liberty and the American flag, and winding up by saying that if there ever was a peonage case this was it; that this was all stated in the presence of the jury.

Mr. Felder testified that he saw from the judge's conduct and language in overruling his motion that the gauntlet was down, and that it was merely a question as to who could impress the jury more strongly; that in opening the case he attempted to answer some of the arguments of the judge, and stated that he knew there was something in the Constitution about protecting liberty, but there were also other sections in the Constitution, one of which guaranteed to defendants an impartial trial in courts of the country, and he asked the jury to see that they got it in that case; that the judge interrupted him frequently, and finally stopped his statement, and said that he was very tired of hearing the word "nigger" repeated, and finally said, "Mr. Felder, I think you are traveling within the borders, and if you persist in it, I will strike your name from the list of attorneys at this bar before my court." Mr. Felder stated that he knew the judge had no power to do that, as his right to practice was a property right, and that the judge made that statement to prejudice him before the jury; that during the trial of this case, the conduct of the judge was so outrageous that there was a consultation among the attorneys at which they proposed the holding of an indignation meeting, but that he dissuaded them from taking such a step, as it might have looked as if they were attempting to influence the trial.

Mr. Felder testified further that after this trial, which resulted in a verdict of not guilty for the defendants, it became known that the jurors who sat upon the case, among others, had been invited to attend a barbecue to be held in Pulaski County on July 4, some weeks later; that Judge Speer then had a signed card published in one of the Macon papers, warning these jurors not to attend the barbecue. The matter received considerable publicity, and Judge Speer furnished another long article in which he attempted to quote the law and give his reasons for issuing the warning to the jurors. The newspapers' articles were copied into the record, beginning at page 1831. In these publications Judge Speer endeavored to make it appear that in accepting this invitation to the barbecue, some weeks after the trial of the case in question, these jurors might be guilty of violation of sections 133 and 135 of the "Revised Code." The warning of the judge was apparently effective, as the barbecue was called off, and the reason given that the parties did not wish to embarrass the jurors.

Mr. Felder stated that the barbecue was called off not so much because the jurors thought they could be punished for contempt of court, but that "they knew that if he did not get them for that, he would get them for something else, and they gave up the barbecue."

Mr. Felder testified also that during the trial of the Branen case, the defendants were out on bond and that when the court adjourned at the dinner hour the first day, the marshal arrested the two defendants and said they must go to jail; that he went to the judge's office and informed him the men were under bond, and that he needed them at his office in conducting the defense, but that the judge declined to allow them to go, and they were kept in jail all during the trial, although they were found not guilty and released at its conclusion. Mr. Felder stated he never saw this done in any other case. He also stated that during the trial of the case, Judge Speer would beckon to his associate counsel, and that after a conference

with the judge, he would return and state that the judge wanted to know if he was impressed with the seriousness of the offense, and that this was merely an attempt to get these men to plead guilty; that the conduct of the judge was enough to make the most innocent man plead guilty.

TESTIMONY OF MR. A. R. LAWTON.

(Page 1746.)

After testifying that he had been acquainted with Judge Speer for many years and practicing in his court extensively, Mr. Lawton stated that he had always considered Judge Speer a man whose temperament absolutely disqualified him for judicial office. That he is by nature a partisan and much stronger as an advocate than as a judge. That he is very apt to take sides from the beginning before he has an opportunity to find out what the case is. Mr. Lawton stated that he agreed fully with the descriptions of Judge Speer given by Mr. A. A. Lawrence and Mr. P. W. Meldrim; that it was his general practice to dominate all cases and that his conduct frequently resulted in unfair and partial treatment of litigants.

Mr. Lawton is the senior member of the leading law firm of Savannah and is also the vice president of the Georgia Central Railway.

He also testified (pp. 1777–1779) that in the case of Tift *v.* Railway Co., Judge Speer made an arbitrary ruling against the company, ordering it to pay into court $500,000, being the penal sum of a supersedeas bond; that it had not been found that a single cent was owing to anyone by the company, and the company appealed to the circuit court of appeals, and while the case was pending there a settlement was effected; that the attorney for the plaintiff (Mr. Wimbish) then went into court and undertook to dismiss proceedings, but that Judge Speer refused to allow it to be dismissed, and that it was necessary to go to the circuit court of appeals and get a mandate allowing the case to be dismissed, which was the end of the matter.

CASE OF UNITED STATES v. ROBERTS.

TESTIMONY OF J. W. PRESTON.

(Pages 155–174.)

Mr. J. W. Preston stated in substance as follows:

That he was a resident of Macon, Ga., and had been a practicing lawyer at the bar in that city for about 40 years. He stated that in the case of the United States *v.* Roberts the charge against Roberts was for selling stamps over the counter as postmaster at Sandersville, Ga., without receiving the cash, and that he was also charged with misappropriation or misuse of Government money. He stated that that there was a prolonged and heated trial of the case and that he had never doubted that the manner of the judge, whether he intended it or not, made such impression upon the jury that the defendant was convicted, while the evidence in the case seemed to demand an acquittal. He stated that the case of Roberts was principally a technical violation of the postal laws and regulations, with no intent to appropriate any money to his own use. Mr. Preston explained that

Mr. Roberts, being a merchant in Sandersville, and also postmaster, had considerable business dealings with The J. W. Burke Co., of Macon, Ga., keeping an open account with that company, and that there was frequently a balance in favor of the company in his possession. The company, in turn, would order stamps and Roberts would ship them to the company and take credit on the open account, charging the stamps to himself.

Mr. Preston stated he was under the impression that upon being convicted Mr. Roberts was sentenced to eight years in the penitentiary, and in explanation of the conduct of Judge Speer continued as follows:

> All I can say is that it seemed to me that the Judge had a strong conviction of the guilt of Mr. Roberts in both of these cases and that that strong conviction of his was most manifest throughout the whole trial, and it went so far and was so injurious and hurtful and disagreeable to me that I thought, as an attorney, that he had determined to convict him whether or not.

Mr. Preston testified further that after the conviction of Mr. Roberts he immediately proceeded to Washington to make application for a pardon, and that the President, Mr. Cleveland, after going over the case carefully, granted an absolute pardon to Mr. Roberts as to the penitentiary sentence, stating as he handed to Mr. Preston the pardon papers, "This case addresses itself more strongly to me than any case that has been before me during my administration." He stated that Dr. Roberts was also convicted on the misdemeanor charge for selling stamps over the counter without receiving payment for them and that the President declined to interfere with the decision of the court in that case, which was a sentence to the county jail. Mr. Preston stated in response to questions that "Of course, he became excited somewhat and, to use a very common expression, I got my back up and he (the judge) got his back up, and to be plain about it he was fighting me and I was fighting him. He was determined to convict the man, and I was determined he should not. He was determined to send him to the penitentiary, and I was determined that he should not do it." Mr. Preston testified further that the doctor was not sent to the penitentiary at all but that he was able to secure his pardon from the President before he had been conveyed to the penitentiary. Upon having his memory refreshed Mr. Preston stated that perhaps the penitentiary sentence imposed was two years instead of eight years as at first testified. Mr. Preston expressed the firm belief that the offense committed by Mr. Roberts was technical, and that his intentions were honest, and that the Government had lost nothing by the transaction.

Mr. Preston also stated during his examination that he considered Judge Speer one of the finest presiding officers who had been known to him, and that he had exceptional mental ability.

Upon being recalled (pp. 452–456) Mr. J. W. Preston stated that he had noticed in the morning papers a statement to the effect that he had testified that he considered Judge Speer the best judicial officer he had ever known and of exceptionally strong mental attainment. Mr. Preston went on to say that while this was practically true it was misleading in connection with other statements he had made; that in his first examination he had not made it clear as to the offense committed by Mr. Roberts in connection with the issuance of money orders, and that the facts were as follows:

Roberts had a bill of about $500 that was due and should have been paid at once, but he did not have but $300 in the post-office treasury at that time. He went out and borrowed, just borrowed, from a merchant, a thing which he stated at that time he frequently did. The name of the merchants there in Sandersville was Newman Bros. He stepped out, as he has frequently done, and borrowed $200 to make the $500. Well, in two or three days one of the Newmans came over to me and called for the $200. He then had the $200 and more in his drawer and had taken the money out of the drawer to hand it to Mr. Newman, or was taking it out, and Mr. Newman said, "I want some post-office orders myself. I want to send off some, and if you will give me some post-office orders for a part of it, I would be obliged to you." Well, he put the money back in the drawer and drew two or three small post-office orders and handed them to Mr. Newman. Now, that is the transaction. Well, now, the point was made under the law that he had no right to have done that. Judge Speer used the language that he had no right, for one moment, to issue post-office orders instead of paying him cash, and it was therefore, as I regarded it then and regard it to this day, merely technical. There was no criminality, and I say for that reason I thought then and think now that Dr. Roberts was convicted wrongly, and I must say in the interest of truth that the very persuasive and overpowering influence of Judge Speer on that occasion resulted in his conviction or was the cause of it. That is all I can say. As a presiding officer his conduct was always polite to me and to other members of the bar, and he was a typically fine presiding officer.

Upon being asked what he meant by the overpowering influence of the judge, Mr. Preston stated that it was just simply his manner on the bench and his apparent intense personal purpose to enforce a conviction in that particular case was unmistakable. No juror, and no witness, and no party present could help but feel that his purpose was to convict Roberts. Mr. Preston stated further that he did not think Dr. Roberts had a fair trial and had never thought so, but went on to state that he wanted to be cautious enough to say that he did not charge Judge Speer with willfully and wrongfully perverting or violating the higher obligations of his office, etc.

Upon cross-examination Mr. Preston testified that he applied for a pardon in the Roberts case because he thought the matter would appeal to the conscience of the President, and thought it would be the most direct way of disposing of it. In answer to the question as to whether he thought it would be better to ask for mercy from the President than to pursue justice in the courts, Mr. Preston replied:

Well, from what I have witnessed from my experience in the trial of the case, and knowing who was in control of things, I thought it would be easier for us to reach the conscience of the President than the conscience of the court.

TESTIMONY OF MR. W. D. NOTTINGHAM.

(Pages 994–1000.)

Mr. Nottingham stated he was an attorney practicing in the courts at Macon, Ga., and recalled the case of United States *v.* Roberts, in which he was engaged as associate counsel; that the judge appeared to be seriously impressed with the guilt of the defendant, and that the jury agreed with the judge and found the defendant guilty. That during the progress of the case he went to Judge Speer and asked him if the defendant would have to undergo any penal servitude if he was convicted or if he pleaded guilty; that the judge replied that it was a grave charge, and that if the jury convicted him or the doctor pleaded guilty, he would have to serve a term in the penitentiary. That Dr. Roberts was charged with two offenses, one for selling postage stamps otherwise than for cash and the other for selling money

orders otherwise than for cash. That Dr. Roberts decided not to plead guilty, and that the case went to trial and was very strongly contested; that the jury found Roberts guilty, and the judge gave him two years in the penitentiary on one charge and 12 months in jail on the other; that Mr. Preston, one of the counsel in the case, then went to see the President, Mr. Cleveland, and secured a pardon in so far as the penitentiary sentence was concerned; that Mr. Preston told him that he had seen the judge and that the judge had agreed that one of the officers of the court would guard Roberts overnight, and that he would not be put in jail pending his removal to the jail the following day; that notwithstanding, the marshal came and stated he was going to take Dr. Roberts to jail, whereupon he [Mr. Nottingham] hurried out and found the judge and asked him if he would not grant an order as Col. Preston had understood he would; that Judge Speer replied: "No, I will not give any order in connection with the case." Mr. Nottingham states he informed the judge that the public was greatly in sympathy with Dr. Roberts on account of his technical violation of the law, and that a heated argument followed, after which he left the judge. Mr. Nottingham stated further that he could not say that Judge Speer had done anything improper in the case.

The testimony on this subject is given by Mr. J. W. Preston and Mr. W. D. Nottingham. Mr. Preston testified that Judge Speer conducted this case in a most unfair and tyrannical manner and that he was determined to convict the defendant, "whether or no."

Judge Speer denies that his conduct was improper. Mr. Nottingham stated that Judge Speer required the marshal to keep this defendant in custody although he was out on bond.

TESTIMONY OF GEORGE S. JONES.

(Pages 1315–1323.)

Mr. Jones testified that during the trial of Rankin *v.* Louisville & Nashville Railway Co. he was fined for contempt by Judge Speer unjustly as he thought; that he was ordered to sit down and to stand up, and his witnesses taken out of his hands and cross-examined by the court frequently; that Judge Speer, on his own motion, called Cook Clayton, who was at the time crier of the court, and examined him as to the shooting of a rifle, etc., in order to disprove and discredit some of the evidence introduced by Mr. Jones; that the judge also called another witness in the same manner and that the testimony of these persons interrogated by the judge was wholly irrelevant. That this conduct on the part of the judge appeared to show that he wished the plaintiffs to recover from the railway company, and that he was not satisfied with the conduct of the case by the plaintiff's attorney and undertook to help him out; that the judge makes a practice of being rather free in the examination of witnesses and that it is customary for him to take sides with one side or the other. That he tries to get the case before the jury as he thinks they ought to see it, and that this effort on his part usually begins early in the case before much evidence has been taken; that at the time he [Jones] was fined by Judge Speer, the judge refused to allow the case to proceed until the fine was paid and criticized Mr. Jones's conduct, to which he excepted

on the grounds that it would prejudice his client's case before the jury; that he considered the jury was influenced by this conduct of the judge, and that he took an appeal to the circuit court of appeals; that he could not get the judge's manner into the bill of exceptions and that he considered the judge's manner and tone on the bench affected the verdict of the jury.

TESTIMONY OF WALTER A. HARRIS.

(Pages 1251–1262.)

Mr. Harris testified that in the case of Matthews *v.* The Brotherhood of Locomotive Engineers, Judge Speer declined to consider a demurrer filed by counsel for the plaintiff in the case, upon the ground that it had not the certificate of counsel required in equity cases, although the case on trial was one at law. Mr. Harris stated that this ruling was improper, as the demurrer in the case at law did not require the certificate of counsel.

In answer to questions as to arbitrary, dictatorial, unfair, and partial conduct on the part of Judge Speer, Mr. Harris stated that he thought the judge was arbitrary and unfair in the case of Johnson *v.* Southern Railway; that Mr. Johnson was the bailiff of Judge Speer's court and had been injured in a railway wreck; that Judge Speer on his own motion called Mr. Cecil Morgan, his brother-in-law, to the stand and endeavored to show from him that Johnson's physical condition after the wreck was different from that before the wreck. Mr. Harris also stated that on the second day of the trial, one of the jurors, Mr. George R. Turpin, was missing from the jury box, and Judge Speer stated that he had excused him; Mr. Harris then stated he would go on with 11 jurors, to which the district attorney, Mr. Akerman, objected. Mr. Harris then asked that the case be postponed until the next day to see if Mr. Turpin did not recover sufficiently to act on the jury. That Judge Speer replied that he did not feel disposed to show any favor to the defendant as he had not let the plaintiff know that a number of witnesses called were present. Mr. Harris replied that he had called their attention to this fact, and that it would not have been a surprise to the plaintiff if he had been ready for trial; that the judge then declared a mistrial. Mr. Harris stated he called on Mr. Turpin, the excused juror, the following morning and found him at his desk, and stated, "Good morning, I am glad to see you looking so well," to which Mr. Turpin replied, "I was not sick." Mr. Harris stated the case was later compromised. On cross-examination, Mr. Harris stated that he had cause for criticism of nearly every case he had tried before Judge Speer.

If it is true, as Mr. Harris intimates, that this juror was excused by Judge Speer and the announcement made that it was on account of sickness, for the purpose of preventing the railway company from winning against Johnson (the judge's bailiff), it was certainly a high-handed, if not corrupt, transaction. This imputation is not denied by the judge, but the subcommittee can not say that this was his motive, but the evidence does show Judge Speer's unfailing inclination to "take sides" in a case according to his whim or caprice.

IN RE FARMERS' SUPPLY CO.

TESTIMONY OF MR. R. C. ELLIS.

(Pages 833–872.)

Mr. Ellis testified that he was one of the attorneys connected with the bankruptcy proceedings in re Farmers' Supply Co. and represented about a dozen corporations who had claims against the company. That when a dividend of 23 per cent was declared in the case by the referee he promptly paid the money over to his clients and supposed the matter was disposed of. That he had nothing to do with the computing of the dividend and did not know that it had been declared until he received the check. That some time later he was advised the referee had made an error in computing the dividend and subsequently received a letter from the trustee enclosing an order from the referee demanding the return of 12½ per cent of the dividend declared. That later the referee passed an order or issued a rule nisi against the attorneys representing the creditors who had received the dividend mentioned requiring them to show cause at Albany, Ga., at 10 o'clock a. m., January 12, 1912, why the money in question should not be returned to the trustee, and upon their failure to do so to show cause why they should not be adjudged in contempt; and the matter referred to Judge Speer for such action as he might think proper. That he made answer to this rule to the effect that he had received the dividend and paid it over to his clients in good faith some months since and that he had requested these clients to refund in pursuance to the rule mentioned, but they declined to do so. That the rule nisi mentioned did not include all of the attorneys who had received this dividend and transmitted it to their clients, R. E. Densmore being one of them.

That later a second order was issued directing the creditors in this case to refund the money. That the next step in the matter so far as he knew was the receipt on April 3, of a telephone message from Albany informing himself and the other attorneys in the case that Judge Speer had passed an order for their arrest, and that the newspapers came out the next day and published the article announcing that the attorneys mentioned had been ordered arrested. The Savannah Morning News stating that it was a very serious matter and involved a large sum of money. That the matter was heralded through all the newspapers throughout the land. That he did not go to Albany in response to the telephone message, and that on the 5th of April he was served with a rule to which he filed an answer and appeared in court and demanded a trial at once, but that the judge put the matter off a few days and when it was finally heard the judge continued the case, although he insisted that the hearing go on, and that judgment be rendered exonerating himself and the other attorneys. He stated he was later informed by one of the other attorneys who happed to be at Albany that the matter was dismissed by the judge at the next term of court some 6 or 12 months afterwards. That the judge could have entered an order when the matter was first heard dismissing the case, but instead kept the attorneys "tied up there and wouldn't let us get out. I don't know whether it was to keep our mouths closed or not. It might have been to keep us in fear that we would come into contempt of court." Upon

being further questioned, Mr. Ellis testified that at the time the hearing was continued by Judge Speer he directed the district attorney, Mr. Akerman, to draw an order bringing the creditors into court, and then turned to the marshal and asked him to serve it, and said if they did not come to arrest them and bring them into court. That at this time it was brought to the attention of the judge that one of these creditors, Mr. W. W. Timmons, of Tifton, who had already been served with a rule nisi to appear and refund the money, was in court in answer to the rule which required him to refund about $800, and that if this was refunded it would complete the amount necessary to pay the dividend desired; and Judge Speer upon being told this stated, "Well, if Mr. Timmons is in court and pays that back, will that settle it?" Mr. Ellis stated further that the judge had previously announced that every man should receive justice in his court and all should be treated alike, but that when he learned the facts about Mr. Timmons he was willing to let one man shoulder the burden of the others.

TESTIMONY OF MR. J. S. RIDGDILL.

(Pages 803–819.)

After being sworn, Mr. Ridgdill stated that he was an attorney by profession and resided at Tifton, Ga., and testified in substance as follows: The Farmers' Supply Co., of Tifton, went into bankruptcy in February, 1910. There were a considerable number of attorneys representing creditors, and a dividend of 23 per cent was declared in the case and checks sent to these attorneys for the amounts due their clients, which were in turn paid over to said clients; that about a year later it was found that this dividend was erroneous, and these attorneys were cited to appear before Judge Speer in Albany to show cause why they should not pay back 5 per cent of the amount which their clients had received; that he was one of the attorneys served with the rule, and in order to avoid the expense of going to Albany to answer the rule sent his personal check to the clerk of the court for the amount of the money called for, stating at the same time that while he was not legally bound to do so he took the action to avoid the necessity of answering the rule; that later on he was again served, together with all the attorneys in Tifton, to appear before Judge Speer at Albany; that he proceeded to Albany, and when the case was called there was no answer other than by himself, and the judge from the bench ordered the marshal to go at once to Tifton and arrest those attorneys and bring them to Albany at the expense of the Government. After this announcement was made he [Mr. Ridgdill] arose and stated to the court that he was one of the attorneys from Tifton and if he had violated any rule of law or ethics was ready to answer; that the judge replied that it was an inopportune time and that he would not hear from him then, but would hear from all the attorneys together, and he states the judge further remarked that it seemed to be a very serious offense and that he wanted to hear all the attorneys and learn what they had to say; that the matter was extensively advertised through all the newspapers of the State on account of this statement from the judge; that at the time the judge made this statement he had information that he [Ridgdill] had already complied with the order. Mr. Ridgdill then produced the

paper in which this incident was published and read from the Albany Herald:

Officers from the United States marshal's office went this morning to Tifton and Valdosta to arrest and bring into court the attorneys against whom charges of contempt had been made by the referee in bankruptcy for alleged failure to obey an order to pay back to the trustee in a bankruptcy case certain funds. One of these attorneys, J. S. Ridgdill, is already here, having come of his own accord yesterday. The others are J. B. Morrow, Robley Smith, George E. Simpson, and L. P. Skeen.

Mr. Ridgdill also submitted an article on this subject published in the Atlanta Georgian, April 3:

Judge Speer to-day ordered the arrest of Robley D. Smith, L. P. Skeen, R. C. Ellis, J. S. Ridgdill, of Tifton, and George E. Simpson, of Valdosta, all lawyers, charged with contempt of court for refusing to turn over certain funds in their possession. * *

Mr. Ridgdill stated that similar articles were published in the newspapers all over the State. In response to a question from the chairman as to whether he or any of the attorneys had been actually arrested on this order Mr. Ridgdill stated that they had been advised by telephone of the order, and they immediately proceeded to the court in order to escape arrest. Mr. Ridgdill read into the record a letter from a Mr. W. A. Dodson, who was one of the moving attorneys in the petition to have the money in question refunded, in which Mr. Dodson admits that the remedy of the interested party was through suit against the bondsmen of the referee and trustee. He stated further that Judge Speer issued an order to have the attorneys in question arrested when no application for such action was before him, and in addition gave the order for the execution by criminal process, of the rule nisi issued in the case, which was in its nature a civil proceeding. Mr. Ridgdill stated the only way he could account for this action on the part of Judge Speer was that it was reported currently that the referee in the case had never given any bond, so that action against him for the recovery of the money improperly paid would be unavailing, and Judge Speer, possibly feeling responsible, thought he must try to get the money some other way, and would sacrifice the reputations of the attorneys by publishing to the world that they had collected money from their clients and refused to turn it over, three or four papers with great glaring headlines having stated that the Tifton attorneys had collected money from their clients and refused to turn it over. Mr. Ridgdill stated that this advertising was very humiliating, and that he had received communications from several friends asking what the trouble was and whether he had turned out crooked after leaving home with a reputation for honesty and veracity. On cross-examination, Mr. Ridgdill stated that the complaint was not that the attorneys in question had been actually arrested by the marshal in pursuance of the order of the judge, but that the judge had made the improper order from the bench which caused the injury to their reputations, etc. This conduct is to be condemned, and the motive suggested, that is, that the judge felt responsible on account of failing to have the referee properly bonded, while not denied, is not clearly proven.

The gist of the complaint in this case is that Judge Speer ordered the arrest of a number of attorneys and made uncalled-for statements from the bench reflecting upon their integrity unjustly, which state-

ments were widely published in the papers of the State and resulted in the loss of reputation to these gentlemen.

If it is true that the judge deliberately sacrificed the good name of these gentlemen in his efforts to force them to refund the money which the trustees should have refunded, and that his motive was to shield his own negligence or that of the referee in not requiring a bond from the trustee, it was certainly oppressive and tyrannical, if not corrupt.

The judge does not dispute the facts in this case, nor that he made the order complained of, but states that the attorneys were not actually arrested in pursuance of the order, but the attorneys testified they came to court in advance in fear of being attached.

Judge Speer's conduct in this case shows a reckless tendency to use his summary power for which the committee has criticised him in other cases.

THE J. C. TITZELL CASE.

TESTIMONY OF DAVID C. BARROW.

(Pages 2139–2149.)

Mr. Barrow testified that he was an attorney by occupation and had practiced in the courts at Savannah since 1896; that in January, 1913, he was employed by Mr. J. C. Titzell, who was a dredging contractor engaged in harbor work, and who had become financially involved; that there was due to Mr. Titzell from the A. B. & A. Railroad $13,000 on a completed contract, and that as he was attempting to collect this money to pay it to the creditors, a petition was filed in the Federal court by Mr. Max Isaacs, on behalf of certain parties at Brunswick, Ga., to whom Mr. Titzell owed $3,362, asking that a restraining order be granted to prevent Titzell from collecting this money due from the railroad; that Judge Speer granted the order in an ex-parte hearing without notice, and refused to modify the order, even to the extent of releasing the money in excess of the claim represented by Mr. Isaacs until Mr. Isaacs had been consulted; that the money in excess of the claim represented by Mr. Isaacs, and a sufficient amount to pay his fee, was finally released and that he later filed a motion to dismiss the restraining order as to the balance of the money, and also asked for the dismissal of the injunction which had been issued; that upon the hearing of the case, Judge Speer declined to grant the injunction asked for by Mr. Isaacs, but at the same time declined to grant an order for the release of the money held. Mr. Barrow stated further that a few months after this occurrence, Mr. Isaacs formed a partnership with Mr. Heyward, Judge Speer's son-in-law. He complains that the action of Judge Speer was arbitrary in granting a restraining order without notice and in holding the money due Mr. Titzell without reason.

TESTIMONY OF MR. W. E. SIMMONS.

(Pages 721–727.)

In answer to questions Mr. Simmons, testified that he had been practicing in Judge Speer's court since 1888, and that so far as his experience is concerned the judge is rather more partisan than judi-

cial and that "he was the strongest counsel on the other side against me uniformly;" that Judge Speer is very vindictive by nature, and is not capable of doing exact justice to a lawyer whom he does not like. He testified that the original estrangement between himself and Judge Speer grew out of politics; that he had never known Judge Speer to decide a legal question correctly in a case in which he was interested. In answer to questions as to the decisions of Judge Speer, Mr. Simmons stated that "the judge would rather be charged with anything else than with being a fool. It is rather a peculiar coincidence, though, but I do not think he ever made a decision upon a legal question for me that I carried up in which he was not reversed. I think the judge could not do justice to any man whom he personally disliked. He is vindictive, tyrannical, arbitrary to those of our bar who do not bootlick him"; that this treatment was accorded to other lawyers as well as himself, and that he had seen the judge treat other lawyers in the courthouse shamefully; that he used to be sorry for Mr. Darnell, district attorney in this district, because of his treatment by the judge. He would ridicule him and make sport of him while he was on the bench. He stated further that he formerly had a large business in the Federal court, but could not get along in it satisfactorily, and therefore dismissed all his cases in order to get from under Judge Speer's jurisdiction; that he was the State attorney for several English corporations, and one corporation in Boston, The New England Mortgage Security Co., all of which had large business in Georgia; that upon trying one of his cases in the Federal court Judge Speer had decided it contrary to the holding of the State courts, and had stated from the bench that he did not believe the Supreme Court of Georgia had rendered any such decision; that although he was forced to dismiss all of his cases in the Federal court in the southern district of Georgia on account of this attitude of Judge Speer, he continued to take all such cases to the Federal court in the northern district of Georgia, and was sustained by the Federal court there.

In answer to further questions of the chairman as to the instances of partial, arbitrary, or unjudicial conduct on the part of Judge Speer, Mr. Simmons stated (pp. 732–747) that he recalled the action of the judge in the case of the New England Mortgage Security Co. *v.* Annie P. Tarver, in which a note and mortgage had been given to secure a loan of $35,000; that when he came to foreclose the mortgage the loan was bought in by Mrs. Tarver's husband and resold to her brother. After detailing the circumstances in this case Mr. Simmons testified that Judge Speer refused to allow a settlement of the case, although all the parties interested were present by their attorneys. That a written agreement was entered into by all the parties, and that when the matter was brought up in court Judge Speer asked if Mrs. Tarver was present, and was told that she was represented by counsel. That the judge was not satisfied with this, although her husband was present, and got up in court and stated that the settlement was desired and that they wanted the decree taken. He states Judge Speer insisted upon having the case postponed, and Mrs. Tarver brought into court, and when she arrived Judge Speer took her into his private room and undertook to persuade her not to agree to that decree. Mrs. Tarver, however, declined his advice and the settlement was made. Mr. Simmons states the judge remarked from the bench

that he had talked to Mrs. Tarver about the case and told her that she was throwing away a principality. Mr. Simmons stated that Mrs. Tarver did not have any real interest in the property, although it was in her name, the property interest actually being in her husband.

Mr. Simmons testified further that after this agreement was made the parties in possession of the property refused to vacate and that he was about to apply for a writ of assistance to put them out of possession; that at this stage of the case Judge Speer, without any bill being filed, granted an injunction against the issuance of a writ of assistance to put his [Simmons's] client in possession of the property. Mr. Simmons then read into the record the order which follows, and which he states was made upon verbal application of counsel for Mrs. Tarver:

United States Court for the Southern District of Georgia.

The New England Mortgage Security Co. *v.* Annie P. Tarver et al. Cost appeal petition, etc.

THE UNION REAL ESTATE TRUST CO. INTERVENTION.

Upon motion of counsel of Mrs. Tarver, it is ordered by the court that the Union Real Estate Trust Co. do not sue out a writ of assistance to enforce said final decree of January 10, 1891, without first making formal application to the court to sue out said writ of assistance, and shall serve Mrs. Annie P. Tarver with notice of said application.

This January 7, 1892.

(Signed) EMORY SPEER, *Judge.*

Mr. Simmons stated that he took an appeal from this injunction to the circuit court of appeals, and that Judge Speer was reversed. Mr. Simmons then presented a transcript of the record in this appeal case and stated, "I do not think any honest man can read that without a shudder of horror."

Mr. Simmons cited another experience had by him in which he considered the conduct of Judge Speer arbitrary and oppressive, as follows: The American Freeholding Land & Mortgage Co. of London, through its attorney, Fred Lockwood, of Augusta, had brought suit in the eastern division of this district, at Savannah, upon a promissory note in the sum of $5,000. Judgment was taken, execution issued, and the land sold by the marshal in November, 1888, to Mr. W. G. Wheeler. Two years after this one Turner Thomas, of Augusta, made a motion to set aside that judgment, the execution, and the deed made by the marshal by virtue of that sale. The motion was made in the western division by consent of counsel. Judge Speer granted the motion to vacate the sale made by the marshal, and Mr. Simmons was employed to take an appeal from the action of the court on the ground that it had no jurisdiction to set aside the sale after the end of the term of the court, such power being only in the court of appeals. Mr. Simmons states that when he arose to argue the case Judge Speer picked up his pen and began writing, and paid no more attention to him than if he had been a post; that he was very much offended and stated to the court, "Will you please lay down that pen until I get through? I treat courts with respect, and I demand it of you." He states this incident created considerable excitement in the court room, and that the judge adjourned court until 10 o'clock next morning; that he was advised later that there was a meeting in the judge's room with

regard to the incident, and that the attorneys present had decided that apologies were due from the judge to Mr. Simmons and from Mr. Simmons to the judge, but that he [Simmons] had stated he would make none to the judge.

Mr. Simmons stated further that the case was argued the next day, and that finally during the vacation Judge Speer entered a ruling against his client, and that when he appeared in court to ask for the allowance of appeal the judge asked him if the other side had been notified, to which he replied that it being an ex parte proceeding there was no necessity for notifying the other party; that Judge Speer replied that he would set it down for the next term of court at Augusta and that the other side had to be notified. Mr. Simmons then stepped up to the desk and took his papers of application and left the court room, after which he proceeded to New Orleans and presented the matter to Judge Pardee and had the appeal granted. That at the next term of court he was present at Augusta, and after the completion of the session of court Judge Speer, seeing that he was preparing to leave, said, "Mr. Simmons, I see you are preparing to leave the court. You are not through with your business." Mr. Simmons said, "I have no further business here." The judge then replied, "You remember I set that application for hearing on allowance of appeal in the Thomas case," to which Mr. Simmons replied that the appeal had long since been allowed, and upon being asked by Judge Speer who had allowed it Mr. Simmons informed him that it had been allowed by Judge Pardee. Judge Speer had his stenographer take down these proceedings and forward a copy of them to the circuit court of appeals, to be incorporated as a part of the record. That he also put a copy of his remarks in his transcript, and when he was arguing the case before the circuit court of appeals one of the justices said, "I thought the judge quit when you appealed," to which Mr. Simmons replied, "Everybody else does, but Judge Speer never quits with me"; that in the argument before the court of appeals with regard to the action of Judge Speer in attempting to interfere with his appeal, "I was making rather a seditious sort of speech, and Mr. Miller, the opposing attorney, who is a good lawyer and a gentlemen, became rather nervous, and he finally asked me if I would permit an interruption, which I granted." He then said, "I want to state to the court that I want to indorse everything Mr. Simmons has said about this motion. Judge Speer prepared and asked us to present it." Mr. Simmons stated further that the court of appeals reversed Judge Speer in this case also.

Upon being questioned as to whether he knew one J. W. Cabiness, Mr. Simmons replied that he was acquainted with Mr. Cabiness and knew that Judge Speer had appointed him a receiver in the Tarver case. That he did not know of any service Mr. Cabiness had performed except to collect the rent and take notes, etc., and that for these services Judge Speer allowed Mr. Cabiness $1,000. In answer to further questions Mr. Simmons stated he did not know of any other services that Mr. Cabiness had performed. On cross-examination Mr. Simmons stated with regard to the action of Judge Speer in ridiculing the decision of the Supreme Court of the State of Georgia, that in arguing the case before the court of appeals, Judge Hammond, who was associate counsel in the case, told the judges of the language of Judge Speer in declining to recognize the ruling of the Supreme

Court of Georgia, and that the judges were very much displeased. Upon being questioned by Judge Speer's attorney as to whether he had finally lost the case in question upon carrying it to the supreme court, Mr. Simmons stated that he had not; that it was not decided on its merits; the supreme court merely deciding that the amount involved was less than the jurisdictional amount. That shortly after this occurrence he was in Macon and noticed in a copy of the Macon Telegraph a long editorial, written supposedly by a reporter, in which it was made to appear that Judge Speer had been upheld by the supreme court; when as a matter of fact, the supreme court had merely dismissed the case on account of the jurisdictional limit. Mr. Simmons testified he went to the editor of the Telegraph and asked where his reporter got the information in this case, to which the editor replied, "Judge Speer wrote that and sent it in here." He states he then requested permission to prepare an editorial setting the matter straight, which was granted, and that the article appeared in the issue of the paper the following day.

An examination of the record in the Tarver case shows that Mrs. Tarver did not have any interest in the property in question and that it was conveyed to her in order that a loan might be placed upon it by her husband and his brother. Mr. Simmons states Judge Speer's action was due to personal ill feeling toward himself.

The judge contends that he is free from blame in this case.

TESTIMONY OF A. A. LAWRENCE.

(Pages 1498–1563.)

Mr. Lawrence testified that in the Greene and Gaynor case Judge Speer made several stump speeches in trying to get the jury under his control which were "awful," "horrible"; that the worst trouble with him is that he is a misfit and should never have been a judge; would have made a great advocate, etc.; that Judge Speer had a very bad reputation all around and that the people feel that they can not get justice; that certain attorneys avoid the Federal court, because they feel they can not get a case fairly tried; that if there was a good judge sitting there the court would be filled with cases; that in a certain case he represented a client who had a mortgage for $50,000 on a piece of property in the district and that he prepared a bill asking for a receiver and presented it to Judge Pardee, as he knew if he presented it to Judge Speer he would appoint as receiver some satellite of his; that Judge Pardee declined to sign the order and stated that if he undertook to sign all such papers he would never have any time to devote to the business of the circuit court of appeals, to which Mr. Lawrence replied, "Well, you are going to deprive me of my right in the Federal court," and that he returned to Savannah and recast his petition so as to bring the case in the State court rather than take it before Judge Speer. In response to a question as to what he meant in stating that Judge Speer would appoint some satellite of his, Mr. Lawrence stated that he meant some one who is under obligations to him like George White, or somebody of that kind. He also stated that when the case gets into Judge Speer's court "they kiss it good-by." That other judges in appointing receivers, if the parties will agree upon a competent man

and make the recommendation, that man will be appointed, but not so with Judge Speer. He also testified that Judge Speer has favorites among the members of the bar.

See affidavit of Mr. Lawrence marked "Exhibit 8–A."

Mr. Lawrence testified (pp. 1416–1465) that he had observed the treatment accorded to Assistant District Attorney W. R. Leaken while he was conducting cases for the Government, and that the judge "was very rude to him and would insult him every time he came into court and got up and opened his mouth."

He also testified that in a certain case he was employed by an old negro client to represent her grandson, a small boy, who, with another boy, was charged with robbing the mail; that upon investigating the matter he found the boy was clearly guilty and had a plea to that effect entered and the boy was sent to the reform school; that the other boy did not plead guilty and was prosecuted by Mr. Leaken on behalf of the Government and, although the boy was guilty, Judge Speer, on account of dislike for Mr. Leaken, made a very strong argument for the defense in his charge, but as the boy was manifestly guilty the jury so found; that Judge Speer sentenced this boy to one year after he stood trial and was convicted, and gave the other boy (Mr. Lawrence's client) who had plead guilty two years.

ALLEGED ARBITRARY CONDUCT—IN RE UNITED STATES v. GEORGE C. HALL.

TESTIMONY OF JOHN R. L. SMITH.

(Pages 101–106.)

Upon being questioned as to his connection with this case Mr. Smith replied that he was employed as special attorney for the Government, and proceeding further stated that "the attitude and conduct of the judge toward the United States attorney in the trial of the case of the United States *v.* George C. Hall, in which I had the honor to be the special assistant district attorney, can not be described by me, except upon the general statement that it manifested a disposition to run the United States attorney out of court." In further describing the conduct of Judge Speer, Mr. Smith stated that it was a disposition to sneer at everything the district attorney had to say, and to express disapprobation of all his motions, and to express a doubt and distrust of the truth of his statements, suggestions, agreements proposed, and matters of that kind." That during the trial Mr. Akerman proposed to have the jury examine the indorsement on a check or bill of exchange with a magnifying glass, and the judge not only refused to allow that to be done, but his expression, and the manner of making this expression "to my mind indicating that Mr. Akerman had done something extremely wrong and unprofessional;" that he [Akerman] was taking some undue and unfair advantage, or undertaking to do so. Mr. Smith stated further that he had been told that there was some estrangement between Judge Speer and Mr. Akerman, and that Mr. Akerman stated this feeling was due to the fact that Judge Speer had turned Democrat and wanted to get him a Democrat for district attorney, and had made up his mind for that purpose to run him out of court, and was about to succeed in doing so; that he had not con-

victed anyone in many months, etc., and that he did not think he would ever be able to convict anybody as long as Judge Speer was on the bench. Mr. Smith stated further that Hall was acquitted in this trial, and was later convicted upon similar evidence with Judge Grubb presiding.

TESTIMONY OF ALEXANDER AKERMAN.

(Pages 1091–1093.)

Mr. Akerman testified that in the trial of this case, Judge Speer was very abusive and insulting to him throughout; that he [the judge] would interrupt his argument and abuse him particularly with regard to an attempt made to have the jury use a magnifying glass in looking at a signature on the back of a check; that when he attempted to do this, Judge Speer came down with his gavel, and said: "Stop, Mr. Akerman, stop. That is manifestly unfair to the defendant;" that he endeavored to show to the judge that it was a very common and proper use of a magnifying glass, but that the judge insisted and refused to allow its use even after he had presented authorities on the subject; that the same man was tried later for an offense involving the same evidence, before another judge, and was convicted. Upon asking to describe the manner of the judge, Mr. Akerman stated that it appeared the judge was trying to discountenance him before the jury.

The testimony in this case is given by Mr. John R. L. Smith and Mr. Alexander Akerman. These gentlemen both testified that Judge Speer treated the district attorney in a most unbecoming and unfair manner, his whole conduct evidencing a desire to "run him out of court," particularly refusing to allow him to have the jury examine the indorsement of a check with a magnifying glass, and criticizing his action as unfair.

The argument presented by Judge Speer and his attorneys is to the effect that this magnifying glass should have been introduced as evidence, and also that proof of the character of the lense should have been made.

TESTIMONY OF MR. JOHN M. BARNES.

(Pages 899–937.)

Mr. Barnes testified that he was a resident of Georgia and had occupied the position of United States marshal from 1897 to 1904; that during the seven years that he was United States marshal Judge Speer kept him walking the tight rope all the time, except at intervals; that at the end of the seven years his efforts to do his duty and at the same time preserve his integrity had resulted in making him a nervous wreck. Mr. Barnes then recited an incident wherein several prisoners had been convicted and sentenced to the penitentiary at Columbus, Ohio, and in which he engaged guards to accompany the prisoners, but was not allowed to use them on account of Judge Speer's desire to have "some of his hangers-on to go as guards;" that he was forced by this action to pay traveling expenses and board of the men engaged by him while they were waiting the action of

Judge Speer; that the judge makes the practice of engaging actively in politics, and in 1908 went personally to the Republican national convention at Chicago, where several of his court officials and appointees were delegates, and made every effort to have Judson W. Lyons, a colored lawyer, elected national committeeman; that Judge Speer is inordinately jealous of any attention or prominence given any of the other court officials or employees, and tries in every way to minimize and humiliate them, until they appear his servants or menials; that he calls them by snapping his fingers at them as he does his dogs; that he requests these court officers to load and unload his horses and dogs on the train, and when the court moves from division to division he puts a notice in the paper that Judge Speer and his "entourage" are going here or there, never mentioning the other officers by name, except along with his horses and luggage; that none of the court officials ever knew when or where he was going to hold court until the last moment, and must fall over themselves to get ready. That Judge Speer claims jurisdiction over everything under the sun, and as an illustration of this point Mr. Barnes cited the following incident:

A seaman was knocked overboard from a merchant vessel at Savannah, and while in the water a shark bit off one of his legs. A damage suit was brought, and the question was being argued before Judge Spear as to whether the case was one "in rem" or "in personam"; that is, against the ship itself or the owners of the ship, and while Judge Charlton was in the midst of his argument Judge Speer interrupted him, as is the custom to interrupt a lawyer at the most telling point in his speech in order to break the force of his argument, and said: "Judge Charlton, the court has listened to the argument of counsel in this case, and it rather seems to me that your action is against the shark." Judge Charlton was irritated, but promptly replied: "Well, your honor, we considered that matter and discussed it among ourselves, but we finally decided that if there was anything on earth, or in the air over the earth, or in the waters of the sea over which your honor did not claim jurisdiction, perhaps it was the fishes of the sea." Mr. Barnes mentioned another incident, in which several men from Pulaski County, having been acquitted on the charge of peonage in Judge Speer's court, and their friends having proposed to give a barbecue to the friends of these men and the jurors who acquitted them, Judge Speer issued a warning through the newspapers and intimated that the jurors and these defendants might be punished for contempt of court if they attended the barbecue; that Judge Speer wrote him [Barnes] up in the newspapers in an article which purported to be a reporter's story, but which he learned was written by Judge Speer, and that "I came back at him in an article which quenched his thirst for a newspaper controversy with me." That Judge Speer had him removed from the marshalship, and that when he was shortly thereafter appointed postmaster at Thompson, Ga., by the President, Judge Speer bitterly fought the appointment; that he never forgives or lets up on those who are guilty of the mortal offense of lese majeste; and, fighting from behind the breastworks of his great office, you can not get at him, man to man.

Mr. Barnes stated further (pp. 914–915) that Judge Speer bitterly opposed the appointment of a colored man as court bailiff, and also the summoning of colored men for jurors. That this resulted in

several collisions between himself and the judge, and that the judge contended such things offended southern traditions and prejudices. Mr. Barnes testified that (pp. 922–931) Judge Speer interferes with the marshal's appointments, such as deputies, bailiffs, guards to prisoners, etc., and that the class of men recommended by the judge are of such inferior character that they are worthless. He produced letters with regard to the appointment of Mr. Nelson and Mr. Moseley substantiating this testimony. Mr. Barnes then related the incident which led up to his dismissal as marshal, and stated that the judge had interfered with him and his deputies to such an extent that he could not properly conduct the office; that the judge overheard him reprimanding a deputy for failing to go and serve process on account of a conflicting order from the judge, in which reprimand he was paying his respects to the judge in forcible language, and that this resulted in the judge making a trip to Washington and having him dismissed; but that the President promptly appointed him as postmaster of Thompson, Ga., which position he still holds.

Mr Barnes stated further that he had been removed as marshal because he dared to do his duty, and tried to preserve his integrity, and that the President stated to him that his removal from office would not bar him from future appointment, after which the appointment as postmaster was made.

Mr Barnes is a man of education and ability. He appears to be somewhat high spirited and independent, and he is undoubtedly prejudiced against the judge.

Judge Speer denies the charges of Mr. Barnes, and attacks his character.

TESTIMONY OF W. A. HUFF.

(Pages 676–704.)

Mr. Huff identified a statement given to the examiner, Mr. Lewis, in which he stated that he stood ready to prove Judge Speer a judicial exploiter of the most glaring sort, a limelighter and notoriety seeker of the worst type, etc. Mr. Huff then testified that he had been on friendly terms with Judge Speer up to the time of the commencement of the litigation in question, and that since that time he has only communicated with the judge in writing. In answer to questions, Mr. Huff testified that there was a great prejudice in the public mind against Judge Speer as a judge, that he is unpopular and dictatorial, tyrannical, despotic, and absolutely selfish; also that the business people in general feel insecure on account of Judge Speer's prejudices, his despotic nature, and his determination to have things his own way. That there is generally manifested a great fear that business institutions may be thrown into the hands of a receiver, and that the people do not know what their rights are or who can protect them. He also stated that he did not believe he would receive any money whatever from the sums placed in bank on account of sales of his property, and that he did not believe his children would receive the money coming to them. That these children were not involved in any way in the litigation, and none of the claims had any reference to their interest in the estate. On being asked as to how Judge Speer was regarded by the attorneys in his district Mr. Huff stated that a great many of them were afraid of him, and upon

being asked to explain stated, "They are afraid to open their mouths here. You have the evidence of that. You can just pick them out. They know that if he escapes impeachment and comes back here their business is gone. They might just as well move out of town. That is the character of the man. The fact that they won't talk, the fact that they are afraid to talk, shows what the man is. I was sitting back here the day before yesterday and heard them cursing him under their hat brims, and you put them on the stand here and they begin to squirm and twist like some of the lawyers have, and are afraid to talk before him. They won't do it." Mr. Huff testified further that the attorneys were afraid to incur the "eternal wrath" of Judge Speer and that many of them had been forced to refuse to take business in the Federal court because they were not on good terms with Judge Speer. In response to a question as to the favoring of pets and favorites in the court Mr. Huff stated that Judge Speer gave the appointments to the marshals and deputy marshals, clerk, and some of the lawyers, naming Mr. Talley as one of the favored few. Mr. Huff testified that he understood also that the partnership between Mr. Heyward and Mr. Talley had been made and drawn in the presence of Judge Speer, and that he, perhaps, supervised it. Upon being asked by Judge Speer's attorney as to where he received this information he stated that Mr. McNeil was the first to speak to him about it.

TESTIMONY OF MR. W. D. NOTTINGHAM.

(Pages 1001–1002.)

Upon the subject of unjust, unfair, and tyrannical conduct Mr. Nottingham stated that you could hear some men make these statements about Judge Speer, which were also made about other judges. That Judge Speer had made strong friends and bitter enemies, as every man with a strong personality must.

ALLEGED GENERAL ARBITRARY AND OPPRESSIVE CONDUCT.

TESTIMONY OF MR. J. W. PRESTON IN RE CASE OF LUCIUS WILLIAMS.

(Pages 457–473.)

In this case a party named Lucius Williams had been adjudged guilty of contempt of court for failing to give possession of property, title to which had been found by the court to be in other parties. This man was killed by certain deputy United States marshals, and they were indicted for murder, the prosecution claiming that the man was killed while asleep on his porch. On this subject Mr. Preston stated that during the trial of the case Judge Speer took the "bit in his mouth" and practically conducted the case; that is, he "controlled that case from the beginning to the end of the prosecution." That the judge took too much interest, more than the necessary interest, as a judge, in defending his deputies. That he took sides from the beginning of the case. Upon being asked by the chairman of the committee as to the actions of Judge Speer, Mr. Preston replied, "Well, I ought to explain that, if you will allow me. Judge Speer controls everything about this courthouse. He keeps the best order in court that I ever saw, etc. The whole of them stand in awe and go tip-

toeing, etc. These men were his deputy marshals, who went out and killed old man Williams who had been ruled in contempt of the law, and they killed the old man while he was asleep." Mr. Preston testified that this case and the case of United States *v.* Roberts were the only two in which he was engaged personally wherein Judge Speer had acted improperly, but he had seen other cases when he happened to be present and heard the facts, but he had nothing to do with the cases himself. Mr Preston stated further that the case of Lucius Williams was outrageous. "I called them murderers in this court and I call them murderers now. They are, but I think one or two of them died shortly after, and one of them disappeared. They murdered the old man. No doubt about that." Upon being questioned as to the general conduct of Judge Speer in the trial of cases Mr. Preston stated that the judge's inclination generally was to jump to conclusions quickly, and to drive to that conclusion all the way through. He went on to say that the judge's perception was like lightning, and that he was a man of tremendous mental power, etc., but that he arrived at a conclusion too soon for a judge. That he carried everything his own way. That his power was frequently overpowering, and he carried cases frequently to unjust conclusions. That the judge was partial and had a very selfish mind. That "he is a man of superior mind, but he knows it too well sometimes."

In response to questions from Judge Speer's attorney as to the actions of the judge in the Williams case he stated, "I don't mean, and don't understand me to say, that there was any corruption in the matter, but anybody who had the faintest grain of sense, or one eye, could see that Judge Speer's feelings were in favor of those deputy marshals, those murderers, as I call them." Upon being asked by Judge Speer's attorney to refresh his memory as to the proceedings in the Williams case, Mr. Preston replied that he could not recall after so long a time how the case sounded, that he had forgotten just how the pleadings were, but that the issue was as to the conduct of the deputy marshals in killing Williams. That "whatever the proceedings were, the issue of murder was involved. I contended that they had not only absolutely violated their duty as officers of the law, but that they had actually committed murder." He stated further in answer to questions of the chairman that the case was tried before the judge and the deputy marshals discharged.

This case attracted much attention at the time, and the evidence is to the effect that the deputy marshals killed Lucius Williams. The men were indicted in the State court, and it was upon habeas corpus proceedings before Judge Speer by which they were taken from the State authorities; that the judge is said to have so conducted the hearing that the men were allowed to go free.

The judge denies the charge made.

TESTIMONY OF DAVID C. BARROW.

(Pages 2149–2154.)

Mr. Barrow testified that he was an attorney and had been practicing in the courts at Savannah since 1896. Mr. Barrow is collector of the port at Savannah. He stated that "the atmosphere about Judge Speer's court is simply, to a man of intelligence, absolutely

intolerable. I have seen things occur in this court room—native Georgians, men of standing and character, cringe before Judge Speer, and it seems to me that of the many things that have been charged against Judge Speer, that the fact that he has, by his conduct and by his misuse of the power of Federal judge, brought about a condition among his own people of fear and intimidation, destroyed their independence, their feeling of independence and manhood—is one of the worst things that he has done." That the attorneys of the Savannah bar go to the extreme in the settlement of cases outside of court, rather than try them in Judge Speer's court for this reason. Mr. Barrow testified that Judge Speer bears a general reputation of being unjust and showing favoritism in the management of cases.

TESTIMONY OF W. W. MACKALL.

(Pages 1738–1739.)

After stating that he had been a practicing attorney in the district for 35 years Mr. Mackall stated that in his opinion, based on common reports and from what he had seen and heard and read, Judge Speer is unfit to be a judge in a free and independent country. He stated further that he had never had any difficulty with the Judge or any grievance against him. He stated further that Judge Speer has his faults and his virtues, but that his faults make him unfit to be a judge. His virtues might make him a useful citizen.

TESTIMONY OF W. W. OSBORNE.

(Pages 2052–2054.)

Mr. Osborne stated that he was an attorney by profession and had been practicing at the Savannah bar since 1886. That he had understood Mr. Toomer in his testimony the previous day to state that in his opinion the majority of the plain people favor Judge Speer, and that this question might be tested by attempting to take any county from the northern district of Georgia into the southern district or vice versa, Judge Speer presiding in the southern district and Judge Newman in the northern district, and that you would find there would be pretty strenuous objection to it.

TESTIMONY OF JUDGE H. D. D. TWIGGS.

(Pages 2195–2212.)

Mr. Twiggs stated he was an attorney by profession and has been practicing in the southern district of Georgia 20 years; that he had been acquainted with Judge Speer from boyhood and that he was a candidate for the judgeship now held by Judge Speer at the time Judge Speer was appointed. Mr. Twiggs then detailed the circumstances relative to his candidacy for the judgeship. He stated that Judge Speer conceived against him a most inveterate hostility on account of his application for the position of judge, and that this hostility appeared in his first case before Judge Speer; that the judge arbitrarily declined to postpone an important case in which he was retained at a time when he had other important

cases set for trial in the State court, and in declining his application wrote a curt letter as follows: "Your letter received. Your application denied. Emory Speer." That Judge Speer's manner toward him in court was "so freezing and discourteous, almost insulting, that I could not stand it." That it was so objectionable, tyrannical, and oppressive that it was noticed by the bar and reached such an extent that he finally had to retire from practice in the Federal court; that this conduct of Judge Speer deprived him of a large and lucrative practice, and that he found it necessary to advise gentlemen who came to employ him that his connection with the case would do them more harm than good; that he knew it would be fatal to their interests. In answer to questions Mr. Twiggs stated it was the almost unanimous opinion of the bar that Judge Speer is utterly unsuited temperamentally to be a judge on account of his irascibility, his tyrannical, overbearing, and oppressive conduct and his intense partisanship; that no member of the bar, no matter how good a case he has got can win it if Judge Speer wants him to lose it, and no matter how bad a case he has he can not lose it if the judge wants him to win it; that this is the general opinion of the bar and that he has never heard it expressed otherwise; that no man in the courthouse who listened to the case tried, no matter how dull he may be, could fail to predict the verdict when the jury retires, owing to the manner in which they are dominated and controlled by the judge; that owing to this parties are denied trial by jury, such as is guaranteed every citizen, as a general rule; that the administration of Judge Speer has been a travesty of justice.

Mr. Twiggs further testified that Judge Speer had allowed his integrity to be impugned by one of the criers of the court and refused to take any steps for redress, and took sides in defense of the crier. (Record, p. 2209.)

TESTIMONY OF MR. J. S. RIDGDILL.

(Pages 820–822.)

Mr. Ridgdill stated that the lawyers of the district considered Judge Speer tyrannical in his conduct and the people generally thought him arbitrary. He cited in instance in which he represented Tift County in a damage suit in which he endeavored to address the court and present a demurrer, but Judge Speer paid no attention to him whatever and ignored his request. He also stated the people of the district do not feel that they can get equal justice in Judge Speer's court and that he has heard some of them state that they would sooner give away their property than go into his court; that is, that they would rather lose their claims than take them into his court. Also that "you hear it said by every lawyer in that part of Georgia that unless you have a pull with the judge or can reach him in some way you stand no show in court."

TESTIMONY OF MR. ALEXANDER AKERMAN.

(Pages 1105–1117.)

Mr. Akerman recited instances in which Judge Speer declined to allow internal-revenue cases to be compromised upon the recommen-

dation of the Commissioner of Internal Revenue and the United States attorney, and also refused to allow orders nolle prosequi entered. He stated that the unbroken line of authorities on this subject was that the judge had nothing to do with the case when the Government desired to nol-pros them.

On cross-examination, Mr. Akerman stated that early in his career he had been appointed referee in bankruptcy and later recommended for appointment as assistant district attorney by Judge Speer, and had been on cordial relations with the judge for a number of years prior to the first estrangement, due to his failing to recommend the judge's son-in-law as his assistant.

When the internal-revenue cases mentioned by Mr. Akerman were presented to Judge Sheppard for dismissal the order was entered as a matter of course.

TESTIMONY OF JUDGE S. B. ADAMS.

(Pages 2471–2485.)

Mr. Adams testified that he was an attorney practicing at Savannah, and had been a member of the supreme court of the State of Georgia; that he has been acquainted with Judge Speer since 1868; that Judge Speer is highly intellectual and an eloquent man; that he is essentially partisan, emotional, moody, uncertain, unreliable, and can not help taking sides and endeavoring in every way to have the favored side prevail, asserting not only the proper prerogatives of a judge, but even that of counsel and also jury commissioner; that Judge Speer makes a practice of rendering long opinions in the nature of a dissertation in the presence of the jury, and that he considered it very bad practice and unfair to the party against whom the court's mind was made up; that this practice of Judge Speer in making speeches in overruling motions seriously interfered with the rights of parties to a fair and impartial trial; that Judge Speer is a very eloquent and persuasive man, and that his influence on the jury is inevitable; that the members of the bar generally do not approve of Judge Speer.

Judge Adams then related an incident relative to the case of U. S. *v.* A. C. L. and others, in which he was representing some of the common carriers, stating that Judge Speer sent for him and told him that if his clients would plead guilty a moderate fine only would be imposed, but intimated that if they did not the powers of the court were very large and the fine would be made very heavy; that he replied to the judge that he would submit the proposition to his clients, and that the judge then asked him if he [Adams] thought the same proposition should be made Messrs. Osborne and Lawrence, stating that their clients were individuals and could be sent to the penitentiary; that Judge Speer asked him if he thought it would be proper for a judge to make such a suggestion; that he [Adams] was embarrassed, but replied that assuming that it was proper for the judge to make the suggestion to him [Adams] it followed that it would be proper to make it to other gentlemen. Mr. Adams testified further that it was not customary for a State judge to send for counsel and tell them in substance "You had better plead guilty or it will go hard with your clients"; that he had never known it to be done in other courts.

TESTIMONY OF MR. P. W. MELDRIM.

(Pages 1636–1640, 1700.)

Mr. Meldrim testified that he was a practicing attorney residing at Savannah, Ga., was 65 years of age, and has held the position of president of the Georgia Bar Association. He stated further that he is chairman of the committee on jurisprudence and law reform of the American Bar Association and a member of the executive committee as well as one of the general counsel. He stated he had known Judge Speer for 52 years and that they were boys together. That there was a time when his practice in Judge Speer's court was very considerable, but that in recent years he had not practiced in that court willingly. Mr. Meldrim stated that this was due to the fact that Judge Speer had insulted him from the bench to the bar and recited the following circumstances:

During the Greene and Gaynor case Judge Speer had been making little speeches to the jury, and the counsel associated with him [Meldrim] had been insisting that he except to the speeches. That finally the judge turned to the jury and stated that the gentlemen should not "weary in well-doing"; that this was the greatest case, perhaps, that had ever been tried in the courts of the United States, and that they should treat it just as if in their own county a defaulting tax collector had converted to his own use their hard-earned tax money. Mr. Meldrim rose and bowed respectfully and asked that an exception be allowed. The court replied, "The court will consider whether it will allow the exception." Mr. Meldrim bowed, and the following day no reference was made to the matter; and the succeeding day his associate counsel insisted that he call the attention of the court to the matter, which he did, and the judge then turned to him and said, "Mr. Meldrim, the court has long known your views, and this court is unable to reconcile your views with the oath which you took to be admitted to this bar." Mr. Meldrim stated he took a step toward the bench, but thought better of any unseemly exhibition, and then went downstairs and waited at the entrance, thinking he would say something to the judge when he came out, but when the judge appeared he had a deputy on either side of him. Mr. Meldrim states the insult was entirely uncalled for, and that he has not spoken to the judge since that time.

Mr. Meldrim testified (pp. 1661–1701) that the conduct of Judge Speer on the bench is unjudicial and discourteous; that the lawyers of the bar of the State wish to get rid of Judge Speer, and that the feeling of the bar generally and of the people of the southeastern section of Georgia is unfavorable to the continuation of Judge Speer on the bench. He stated he had retired from a number of cases owing to the fact that he realized his connection with them would be detrimental to his clients' interests. Also that Judge Speer as an advocate was superior, but that he did not know of any man who was less adapted for judicial work; that the judge is the strongest prosecuting counsel from the bench he has ever heard. He testified further that in the Hester damage case, in which Talley & Heyward, as plaintiff's attorneys, were employed on a contingent fee, the judge took charge of the case, and that, therefore, the plaintiff's counsel did not have any trouble, and secured judgment for $5,000.

Judge Speer's conduct in this case and the verdict for the firm of his son-in-law, which was employed on a contingent fee, should be considered in connection with the judge's statement that he had not "consciously" presided in a case in which his son-in-law was interested in a contingent fee.

Mr. Meldrim testified (pp. 1645 to 1652) that in the case of McKeever *v.* The Florida Peninsula Railway Co. he was employed by the plaintiff to recover damages for the death of plaintiff's son, who had been knocked from a freight train by the train crew and killed. That the suit came on for trial January 16, 1899, Judge S. B. Adams representing the railroad company, and that Judge Speer decided the case in the face of at least half a dozen similar Georgia cases and others in Pennsylvania, Illinois, Texas, Iowa, and Kansas. Mr. Meldrim then cited the cases referred to. He stated that no lawyer could ever have disputed the proposition, but that Judge Speer held contrary to all these decisions and proposed to direct a verdict; that he (Meldrim) thereupon dismissed the case in the Federal court and brought it again in the State court. That Judge Speer then threatened to have him attached for contempt for dismissing the case out of his court and having it brought in a State court; that he left the office and sent one of his clerks to the stenographer, Mr. Talley, to get a transcript of the proceedings and the language of the judge, but that the young man returned with the statement that Mr. Talley was too busy, and that he tried the following day to get a copy of the proceedings and finally obtained a portion of it, but that the language of Judge Speer calling on Mr. Adams, the attorney for the railroad company, to rule Meldrim for contempt for dismissing the case was not in the report. That the matter was left in that state, and that some time later he saw Mr. Talley upon a railroad train and asked him why he had left out that part of the proceedings from the report furnished, and that Mr. Talley replied that Judge Speer had told him to leave it out. Mr. Meldrim stated he supposed Judge Speer had thought better of the matter, but that it was a fact that he had in open court directed Judge Adams to proceed against him for contempt because he had dismissed the case out of Judge Speer's court and taken it into the State court.

He testified further that Judge Speer had arbitrarily declined to allow the case to be postponed upon his request, when there was no reason for such arbitrary conduct.

Mr. Meldrim is recognized as among the foremost lawyers in the State of Georgia, and he is a gentleman of the highest character and standing.

The gist of the complaint in the McKeever *v.* F. P. Ry. case is that Judge Speer took sides with the defendant and went so far as to request the defendant's attorney to rule the plaintiff's attorney for contempt, and later instructed his stenographer to eliminate his remarks on this subject and prevented the defendants from obtaining a copy.

TESTIMONY OF MR. R. L. COLDING.

(Pages 1956–1978.)

Mr. Colding stated that he was an attorney and had been practicing in the courts of Savannah, Ga., for 17 years. That he had noticed

the conduct of Judge Speer toward the assistant district attorney, W. R. Leaken, to be discourteous on more than one occasion. That he recalled the case of United States *v.* Charles Craig, who was under indictment for having counterfeit money in his possession. That during the case the assistant district attorney spoke of one Jennie Williams. That the judge inquired who was this "mythical person, some imaginary person, some will-o'-the-wisp, or was she real flesh and bone," to which Mr. Leaken replied that she was a real person, but that the Government did not desire her testimony, and the judge then said, "Was she, then, indeed, such a bad witness for the Government that in the exercise of a wise discretion you thought best not to put her up?" and further, "Well, a bad witness for the Government is necessarily a good witness for the defendant. Go on with the case."

Mr. Colding was representing the defendant in this case and he stated the judge helped him out a great deal during the trial and in overruling a motion to direct a verdict, made a good argument for the defense, stating among other things "as Mr. Colding has argued to you the gist of this offense lies in having counterfeit money in his possession." (Mr Leaken had at this moment picked up from the table some of the counterfeit money used in the trial and was holding it in his hand). The judge proceeded to say, "If the crime consisted in having counterfeit money in his possession how could our district attorney hope to escape at this moment?" Mr. Colding states the jury promptly returned a verdict in favor of the defendant and that as he was leaving the courthouse one of his friends said, "Did you win your case?" to which he replied, "No, I didn't win the case, but me and the judge together, we won it all right." Mr. Colding also stated that after the judge's charge to the jury there was nothing left for them to do but acquit the defendant. Mr. Colding stated that Judge Speer had never been discourteous to him personally.

He testified that in the case of United States *v.* Harry Olson, in which he represented the defendant, Judge Speer intimidated witnesses and practically coerced a verdict of guilty. That when he produced a witness for the defense the judge turned to the man and said: "Do you know that you are sworn here to tell the truth? Do you know what will happen to you if you do not tell the truth? You will not be permitted to leave the court room. You will be sent to jail." That this frightened the witness to such an extent that he suffered a lapse of memory and was of no use and that it had such an effect on his other witnesses that he would not introduce them. Mr. Colding testified in answer to a question from the chairman as to general conduct, that Judge Speer always takes sides in the trial of cases and assumes the role of attorney for one side or the other. That it is not a question of whether the case is good or bad, but as to how the judge looks at it. That he can sum up a case in a way that it has never been summed up before. That it is not a question of a lawyer on either side and a judge acting in a judicial capacity, ruling in a case in an orderly and impartial way, but a question of the judge taking a position on one side or the other. That a trial by jury in a court presided over by Judge Speer is a farce. That the judge injects himself into every case and that the jury is never left long in doubt as to his position. That he has never known of

but one or two cases where the judge did not dominate everything in sight, and literally domineer the bar in everything that was done. Mr. Colding stated on cross-examination that Judge Speer's influence on the juries often results in a miscarriage of justice, and that an ignorant jury, taking everything from the judge as gospel, the statements of law and facts are mixed up to such an extent that the jury can not differentiate as to where one ends and the other begins.

Mr. Colding is an attorney of prominence in Savannah, and his statement relative to the conduct of the judge in the case of United States *v.* Charles Craig, that the judge's misconduct assisted him in winning the case is certainly not tainted with self-interest.

TESTIMONY OF MR. W. M. TOOMER.

(Pages 1728–1733.)

While on the stand in the Crawley case, Mr. Toomer was asked by Judge Speer's attorney to express an opinion of Judge Speer as an official, and in reply stated that he had always considered Judge Speer a very hard worker, that he was a man of commanding capacity as a lawyer and as a literary man. That Judge Speer had never granted him any favor or appointment in a financial way and that he had never been able to consider the judge as not personally and judicially honest. He stated further that in his opinion the rank and file of the plain people and business men of southern Georgia find Judge Speer and his court a perfect terror to evildoers, not because of the severity of the sentence he is going to impose, but because of the certainty of conviction in his court.

Mr. Toomer has not been a resident of the southern district of Georgia for about eight years.

The following-named gentlemen testified that Judge Speer's conduct on the bench was arbitrary, tryannical, oppressive, partial, or insulting, etc.:

Hon. John R. L. Smith, attorney, Macon, Ga.
Mr. J. W. Preston, attorney, Macon, Ga.
Mr. W. E. Simmons, attorney, Lawrenceville, Ga.
Mr. J. T. Hill, attorney, Cordele, Ga.
Mr. John M. Barnes, postmaster, Thomson, Ga.
Mr. R. C. Ellis, attorney.
Mr. W. H. Burwell, speaker Georgia House of Representatives.
Hon. Alexander Akerman, United States attorney, southern district of Georgia, Macon, Ga.
Mr. E. P. Davis, attorney, Warrenton, Ga.
Mr. Walter A. Harris, attorney, Lincoln, Ga.
Mr. George S. Jones, attorney, Lincoln, Ga.
Mr. A. A. Lawrence, attorney, Savannah, Ga.
Mr. John Rourke, Jr., attorney, Savannah, Ga.
Mr. Gordon Saussy, attorney, Savannah, Ga.
Hon. A. R. Lawton, vice president Georgia Central Railway, Savannah, Ga.
Gen. P. W. Meldrim, attorney, Savannah, Ga.
Mr. W. W. Mackall, attorney, Savannah, Ga.
Mr. W. V. Davis, president Savannah Trust Co., Savannah, Ga.
Mr. Anton P. Wright, attorney, Savannah, Ga.
Hon. Thomas S. Felder, attorney general of Georgia.
Mr. R. L. Colding, attorney, Savannah, Ga.
Col. William Garrard, attorney, Savannah, Ga.
Mr. W. W. Osborne, attorney, Savannah, Ga.
Mr. George S. Murphy, merchant, Augusta, Ga.
Mr. David C. Barrow, collector of customs, Savannah, Ga.

Judge J. H. Twiggs, Savannah, Ga.
Hon. Jacob Gazan, attorney, Savannah, Ga.
Mr. R. L. Bennett, attorney, Waycross, Ga.
Judge Samuel B. Adams, attorney, Savannah, Ga.
Mr. J. S. Ridgdill, attorney, Tifton, Ga.
Mr. W. C. Snodgrass, attorney, Thomasville, Ga.
Mr. W. A. Huff, Macon, Ga.

The substance of the statements made by these parties has been heretofore mentioned.

They are all gentlemen of high standing, with large experience in the courts and business world, and the list includes many of the most prominent attorneys and men in public life in both political parties.

In connection with the statements made by Judge Speer in his brief that many of the parties testifying against him had previously indorsed him very strongly for appointment to the circuit court of appeals, especially members of the Savannah bar, attention is invited to the following letter from Mr. Anton P. Wright to the chairman of the subcommittee, and to the letters which follow it, from Mr. J. N. Talley, the judge's stenographer, to Mr. Wright, showing that the indorsement of the Savannah bar was only obtained after written request from the judge's stenographer to Mr. Wright, who then had the memorial to the President prepared and circulated it among the attorneys who signed it. The letter follows:

MARCH 19, 1914.

Hon. EDWIN Y. WEBB,
House of Representatives, Washington, D. C.

DEAR MR. WEBB: I have recently seen the brief presented by Judge Speer to the Judiciary Committee and have been much struck with the fact that the judge has seen fit to include in that document a photographic copy of the indorsement of the Savannah bar of himself for judge of the circuit court of appeals of this circuit. The judge seems to take great satisfaction in the fact that most of those who were called upon by sense of duty to testify against him voluntarily signed the memorial. As I happen to be cognizant of the history of that indorsement, I am taking the liberty of communicating it to you.

At the time that this memorial was prepared, I had been in the practice of my profession but a short time and it is true that Judge Speer, from time to time, manifested a friendly feeling toward me, having on a number of occasions appointed me special master to pass upon the compensation to be allowed counsel in bankruptcy matters. Probably for this reason the judge considered that he had "a claim" upon my services. At any rate, when it was thought that Judge Speer would be appointed by President Roosevelt to the circuit court of appeals, I received a letter, copy of which I inclose, from Mr. J. N. Talley, who at that time was the official stenographer of Judge Speer's court. I got the Hon. Walter G. Charlton, now judge of the superior court of this county, to draw the memorial indorsing Judge Speer, and Mr. Gordon and Mr. Saussy circulated it among the local bar. I did not myself, as I recollect it, request anybody to sign the memorial, but if I recollect correctly both Mr. Gordon and Mr. Saussy stated to me that a great majority of the bar signed it, expressing the hope that it would remove Judge Speer from the southern district of Georgia and put him somewhere that would relieve us of his presence.

The point I am making, however, is that the memorial was not quite as spontaneous as the judge would have Congress believe, but was gotten up upon the suggestion from the judge conveyed through his court stenographer. I think an investigation of the recent grand jury indorsements would probably develop the same facts.

I do not know that this is important, but it certainly is explanatory in a measure of the methods which the judge has pursued in order to obtain indorsements of himself.

I beg you to note that Mr. Cunningham, to whom he refers, was at that time and now is a member of the firm of Lawton & Cunningham, about whom he has had so many things to say of an uncomplimentary nature as representing the great railroad interest, etc.

I give this to you for what it is worth.

Very truly, yours, (Signed) ANTON P. WRIGHT.

W/P.
2 inclosures.
I have just succeeded in finding the original letters.

Copy.)

MACON, GA., *January 24, 1903.*

Mr. ANTON P. WRIGHT,
Savannah, Ga.

DEAR MR. WRIGHT: While it is practically certain that the President will appoint Judge Speer to the vacancy on the circuit court of appeals made by the retirement of Judge McCormick, I am satisfied that the judge would be gratified to have presented to the President a memorial from the bar of Savannah expressing what I am sure is the kindly estimate of the bar of his judicial character. Do you not think it would be well for yourself and one or two active friends like Mr. T. M. Cunningham, jr., Mr. W. W. Gordon, jr., and Mr. Fred T. Saussy, or any other whose name might occur to you to take this matter in hand. It would be well, I think, to have a carefully written paper such as would arrest the attention of the President and the Attorney General. The bar here will take that action, and I am satisfied will in Augusta and Valdosta also, and perhaps elsewhere. I would be glad to hear from you on the subject.

With warm regard, very truly, yours,

J. N. TALLEY.

(Copy.)

MACON, GA., *January 29, 1903.*

MY DEAR WRIGHT: I have rarely seen the judge more delighted than he was with the memorial of the Savannah bar to the President in his behalf. He spoke not only of the cordial tone of the letter but of the memorial and of the high literary excellence. He thinks it is a document of such great importance that it should be sent on from Savannah accompanied with a personal letter from yourself or such others as you may suggest, calling attention of the President to the memorial. I return it herewith with the request that you will give it that direction. It was shown to several members of the Macon bar, and while they adopted very fine resolutions themselves, they speak in the highest terms of your paper.

I thank you very much for giving the judge the opportunity of seeing the memorial.

With cordial regards, sincerely yours,

J. N. TALLEY.

This correspondence shows that the indorsement of the attorneys was made by request to the judge's secretary, and that after receiving the memorial with the signatures attached, the judge asked that it be returned to Savannah and sent to the President with a personal letter from Mr. Wright. It also shows that in making the request for this indorsement from the Savannah bar, Mr. Talley took pains to ask that the memorial be written in such a manner as to arrest the attention of the President and the Attorney General.

The testimony of a number of witnesses should also be noted to the effect that they signed the memorial indorsing Judge Speer in the hope that he would receive the appointment and thus the district would be rid of his presence. Some of them stated they considered he could do less harm on the circuit court of appeals than as a trial judge.

JUDGE SPEER'S PERSONALITY AND FACTS SURROUNDING HIS APPOINTMENT.

None of the members of the committee had ever seen Judge Speer prior to these hearings. From their personal observation of him, his manner in the presence of the committee, his conduct as detailed by the several witnesses, and from the brief in his behalf which he was permitted to file with the committee within 30 days, a copy of which is appended to the volume of the hearings heretofore published, the subcommittee has been able to form an opinion of this jurist.

His physical condition, though in the sixty-sixth year of his age, portrays one who has endeavored to preserve his physical strength. His quick step, lofty bearing, and keen eye at once portray the active intellect, proud nature, and grim determination which have characterized his conduct as a public officer in various capacities for more than 40 years. Every fiber in his make-up portrays contention.

Judge Speer came to the bench in the southern district of Georgia in 1885. He was a Confederate veteran and came from a Democratic family; was elected to the Congress as a Democrat; became so popular while in Congress with the Republican administration that he was appointed United States district attorney in 1883, serving in that capacity until 1885, when he was appointed United States district judge by President Arthur, since which time he has regarded himself as a Republican, participating in Republican conventions of various shades of importance until recently, when, it was stated by one of the witnesses, Judge Speer has esteemed himself a Democrat.

It may be that the peculiar circumstances surrounding his appointment, including the fact, as stated by one of the witnesses, that he was confirmed by but one vote in the Senate, is more or less responsible for the deplorable condition discovered by the committee upon this investigation.

The testimony taken is full of evidence of the fact that Judge Speer went to the bench in 1885 well equipped with experience and training as well as a full knowledge of the tremendous powers vested in the judges of the United States by law, and the ability and disposition to exercise them. The change in his political career and his positive, arbitrary, and arrogant manner were such as to make it easily ascertainable what persons were unfriendly to him politically, as well as personally.

A reading of the record makes it plainly evident that throughout the long period of his service of almost thirty years, there has been an utter lack of harmony between the judge of the United States court for the southern district of Georgia, and the bar of the district, as well as the people. The committee found a revengeful spirit, evidenced frequently by the testimony of witnesses toward Judge Speer and, on the other hand, a superior consciousness of the great power of the judge over all matters coming before him and the rights of the people of his district. There has been an absolute want of effort on the part of the court to make the people of that district feel that their Federal court was the bulwark of their liberties, but rather a disposition has been evident on the part of the judge to punish those who were unfortunate enough to be brought into his court in civil as well as criminal matters.

An examination of the record in this case is suggestive of the fact that early in his judicial career Judge Speer ascertained the limit to which he could go before liability to impeachment for official conduct would accrue and went as close to the line upon many occasions as safety would permit.

Having literary attainments, oratorical ability, and a keen intellect knowing the privileges of a judge sitting in the trial of cases before a jury, it was rare, indeed, that a jury was permitted to return a verdict contrary to his wishes, regardless of all the facts. The right recognized in the jurisprudence of United States to judges to sum up the facts in jury cases has been used with tremendous effect by the

judge. A motion at the close of plaintiff's testimony, or of the Government's evidence, to instruct the jury, has frequently been made to afford an opportunity to deliver speeches prejudicial to the rights of the parties to the case. In this manner the sitting judge was enabled to repeatedly punish counsel whom he did like, as well as litigants. These practices have been indulged in with such frequency as to lend color to the charge frequently made among members of the bar of the southern district of Georgia to the effect that the right of trial by jury has practically been suspended for more than a quarter of a century.

FINDINGS UPON THE SEVERAL CHARGES.

Section 67 of the Judicial Code provides:

> No person shall be appointed to or employed in any office or duty in any court who is related by affinity or consanguinity within the degree of first cousin to the judge of such court: *Provided*, That no such person at present holding a position or employment in a circuit court shall be debarred from similar appointment or employment in the district court succeeding to such circuit court jurisdiction.

It has been held by the circuit court of appeals of the eighth circuit, of an appointment in violation of section 67, supra, that—

> That an attack on an appointment made under this provision must be made by a motion to set aside the order appointing." (Seaman *v.* Northwestern Mutual Life Ins. Co., 86 Fed., 493.)

Mr. A. H. Heyward, a practicing attorney at the Macon bar, is a son-in-law of Judge Speer. For a number of years he was in partnership in the practice with Mr. J. N. Talley, who prior to the organization of the partnership had been the judge's private secretary and court reporter. About January 1, 1913, that partnership was dissolved and in the spring of 1913 a new partnership was formed, composed of Mr. Heyward and a Mr. Max Isaacs, of Brunswick, Ga. The latter, prior to the formation of the partnership, having been one of the referees in bankruptcy of the district court, by appointment of Judge Speer. The firms of Talley & Heyward and Isaacs & Heyward handled many bankruptcy and other cases in Judge Speer's court.

In one case, a damage suit, the firm of Talley & Heyward represented a plaintiff and were to receive for their services a contingent fee. In this latter case the evidence shows there was a private discussion between counsel relative to Judge Speer's right to hear the case. However, the question was never raised and Judge Speer was not called upon to recuse himself. In none of the other cases was the point directly raised. There is an intimation in the evidence that this question was not raised by attorneys for the reason that they were fearful of the consequences which they might be called upon to bear at the hands of Judge Speer, it having been stated by one of the witnesses where the matter was discussed by the witness and Judge Speer in chambers, that if anybody raised that question "somebody would go to jail."

In all of the testimony there is no evidence of any direct appointment by the judge himself of Mr. Heyward, the judge's son-in-law, to any official position. The appointments ran to J. N. Talley, who was Mr. Heyward's partner; that is, where made by the judge. Frequently, however, he was employed as attorney for receivers and

trustees, but in those cases the fees were allowed, where they were allowed directly to Mr. Heyward, by receivers in bankruptcy, trustees, or special masters, and where Mr. Heyward would be allowed a fee as receiver or trustee, this fee would first be fixed by the master-in-chancery or special master, as the case might be. The fees and emoluments coming to the firm of Talley & Heyward from its inception, July 1, 1906, down to and including December 31, 1912, have been estimated to amount to between $40,000 and $50,000.

Mr. Heyward is a gentleman of pleasing personal manner and a man of character, although not at all proficient in the practice of the law. Yet, he was permitted to share in the earnings of the partnership, and there is evidence tending to show at times the fees of the partnership were quite substantial, yet had Mr. Heyward been thrown upon his own resources it is plainly evident that he would have been able to have procured but a very small portion, if any, of the fees earned by the firm on account of his lack of professional ability.

For some unknown reason, at the close of the year 1912, Mr. Talley, a capable and active practitioner, and Mr. Heyward found it desirable to dissolve partnership, and there is substantial evidence tending to show that Judge Speer then sought to assist his son-in-law in the formation of a new partnership by an alliance with some reputable practitioner in the district. A very strong intimation was made by the judge himself to a Mr. Bennett that he should move to Macon and form a partnership with Mr. Heyward. However, after giving the matter consideration, Mr. Bennett declined the invitation. Finally, a Mr. Max Isaacs, a practicing attorney of Brunswick, in the district, who had been one of Judge Speer's referees in bankruptcy and had frequently given Mr. Heyward, the judge's son-in-law, such appointments as receiver and trustee, came in to attend court in Savannah and publically tendered his resignation to Judge Speer. The judge sitting upon the bench, in accepting the resignation of Mr. Isaacs, took occasion to very generously laud Mr. Isaacs from the bench for his services as referee, and commended his attainments as a practitioner. Shortly after this event, Mr. Heyward, whose home was in Macon, was seen in Savannah. He held frequent conferences with his father-in-law, sitting with him on the bench during the trial of cases. In the evenings Judge Speer, Mr. Isaacs, and Mr. Heyward would be seen together at the De Soto Hotel. Following closely upon the happening of these events, the new partnership of Isaacs & Heyward was announced.

Shortly after the formation of this partnership three of the largest concerns in southern Georgia were called upon to defend against petitions in bankruptcy in Judge Speer's court, filed by the firm of Isaacs & Heyward, acting as attorneys for the petitioning creditors. The Beach Manufacturing Co., the Gray Lumber Co., and the L. Carter Co. cases probably present the strongest suggestion of judicial corruption in the record, and yet there is no direct testimony connecting Judge Speer with the instigation of these cases. There is evidence tending to support the contention that the judge was instrumental in procuring the partnership of Isaacs & Heyward. That Mr. Isaacs was very influential with the court was known to all familiar with the business of the United States court in the southern district of Georgia. He had frequently complimented Mr. Heyward with appointments while he (Mr. Isaacs) was acting in the capacity of

referee in bankruptcy. There is evidence showing that the judge attempted to procure a partnership with Mr. Bennett, one of the strongest practitioners in the district, but was unsuccessful. Following the formation of the new partnership came the three bankruptcy cases alluded to, in which Judge Speer showed a disposition to pass almost any order requested by counsel for the petitioning creditors to enable them to get these large estates into court. As the fees due the attorneys for petitioning creditors in bankruptcy cases depend almost entirely upon the contingency of the respondent being adjudicated a bankrupt, the fees of the firm of Isaacs & Heyward in these cases were to this extent of a contingent character.

In the Beach case, in an ex parte hearing, without notice, upon the petition of Isaacs & Heyward, Judge Speer appointed a permanent receiver for the company. No rule nisi was issued requiring the company to show cause why the permanent receiver should not be appointed. Attorneys for the company answered, denying the acts of bankruptcy and denying insolvency. They also filed a petition asking for the vacation of the receivership as there was no necessity for it, and was granted in an ex parte hearing and without notice. Counsel for the respondent and interested creditors in that case vigorously contested and had the case set down for a hearing upon a motion to dissolve the receivership. This hearing was set for April 3, 1913. During the course of these hearings Judge Speer once or twice intimated to counsel that they should settle the case; that it looked bad indeed for the defendant, etc. As it apparently looked to counsel as though Judge Speer had decided the case in advance, the motion to dissolve the receivership was withdrawn, but later the case went to a hearing and the jury found that the company was solvent and had committed no act of bankruptcy. It was found that the defendant had assets of between $350,000 and $400,000, while the indebtedness of the company, bonded and otherwise, amounted to but $270,000.

About a year before the commencement of the bankruptcy suit by Isaacs & Heyward dissatisfied creditors had sought to throw this same company into bankruptcy. Upon that occasion the general counsel for the company, conceiving it to be wise to interest the law firm of which Judge Speer's son-in-law was then a member, to wit, Talley & Heyward, employed them, and they resisted the application of creditors vigorously. In that proceeding the side of the case in which Judge Speer's son-in-law was interested was successful, but later, when another firm in which the judge's son-in-law was interested filed a petition in bankruptcy, it required a strenuous effort and a strong showing to get the estate out of Judge Speer's court.

These three large bankruptcy cases and the arbitrary manner in which they were handled, as well as the ease with which the firm of Isaacs & Heyward could throw almost any concern with large assets into the bankruptcy court, sent a shock through the entire district. Receivers were appointed in these cases who retained Isaacs & Heyward as their counsel, and the impression gained circulation that the presiding judge was assisting this firm in its effort to throw large estates into bankruptcy for the purpose of plundering them. Business men felt unsafe, and many concerns which had a few bills past due felt that they were "marked" and might possibly be the next victims.

There are some suspicious circumstances surrounding the relations of the judge and the firm of Isaacs & Heyward in connection with these cases, but the committee was unable to find evidence which in its judgment would enable the Senate to sustain articles of impeachment based upon the conduct of the judge in these particular cases. To say the least, Judge Speer exercised exceedingly poor taste and was guilty of indiscretions unbecoming a high judicial official in participating in the organization of this firm and apparently passing orders of grave importance, involving great wealth and the savings and accumulations of many of the most active people in the district, without due consideration.

The conduct of these cases by Judge Speer, as well as other cases which came to his court during many years prior, have had the effect of destroying the usefulness of his court to the people. Whether justly or unjustly, the people of the southern district of Georgia have ceased to feel that the United States court for the southern district of Georgia is a forum in which their constitutional rights and liberties can be vindicated and their property protected. He has, by his conduct, made his very high and honorable position one to excite the fear and suspicion, rather than to command the respect and confidence of litigants.

That he allowed his personal friends very liberal fees in bankruptcy cases there is no question. He violated the laws with reference to drawing jurors, for which he was criticized by the circuit court of appeals; but in a particular case, while criticizing the manner in which the law had been violated, the latter court refused to set aside the judgment of the lower court, on the ground that no actual injury had been shown.

Technically, the judge did violate the mandate of the Supreme Court of the United States in this: A negro, who had, at times, worked for the judge's wife, was drunk and disorderly on the streets of Macon. He was arrested, tried in the city court of Macon, and sentenced to work on the county chain gang. At the instance of the judge, a petition for a writ of habeas corpus was sued out, in his own court, and the defendant was taken from the custody of the city officers. The city of Macon prosecuted an appeal to the Supreme Court of the United States. In a brief opinion the Supreme Court reversed the judgment of the district court upon the theory that the prisoner had not exhausted his rights in the State courts before appealing to the Federal courts and that therefore the district court was without jurisdiction. The city attorney of the city of Macon procured the mandate of the Supreme Court, sought the cooperation of the attorney for the prisoner in an effort to have the mandate of the Supreme Court made the judgment of the district court. The attorney who sued out the petition for the writ carried the mandate to the home of Judge Speer and there conversed with him concerning it without success. Later, the city attorney of Macon presented the mandate, together with a petition to Judge Speer, asking that it be made the judgment of the district court, whereupon the judge, who was then sitting in bankruptcy, said the court was not open for the transaction of business of that character, but requested the city attorney to file the petition and mandate with the clerk of the court, where it was permitted to rest for many months. Immediately after the filing of the mandate as directed the city authorities took possession of the prisoner and

recommitted him to the chain gang. Another petition for a writ of habeas corpus was then presented to the Superior Court of Georgia and the prayer thereof denied. The next day after presenting the mandate to Judge Speer the latter cited the city authorities to appear and show cause why they should not be punished for contempt of court for taking the custody of the prisoner before he had made the mandate of the Supreme Court the judgment of his court and later, after a new condition had arisen, a new habeas corpus proceeding was instituted in the United States Court.

The city authorities answered, the contempt cases were continued from time to time and were later dismissed, some years after, but the mandate of the Supreme Court was not made the judgment of the district court for a period of some seven months after it had been presented to Judge Speer while holding court. The city authorities treated the judgment of the district court as set aside absolutely by the reversal order of the Supreme Court, without the mandate of the Supreme Court technically having been made the judgment of the district court, while Judge Speer declined to enter the formal order relative to the mandate until after a new condition had arisen, making the basis for another proceeding similar to the first based upon a different state of facts.

Judge Speer was hostile to the law under which the negro had been committed to the chain gang; had lectured against it to his law class in a local school, and was quite a partisan against that law.

In this record there is evidence tending to show the judge went out of his way to get jurisdiction in this case and, after having taken jurisdiction, acted, and been reversed by the Supreme Court, his failure in making the mandate of the Supreme Court the judgment of his court in that particular case was such as to make him technically guilty of that charge, although the courtesy of counsel toward a court in which there was less contention between the bench and the bar than in Judge Speer's court would have required that counsel for the city of Macon wait until the presiding judge had formally made the mandate of the Supreme Court the judgment of the district court. On the other hand, proper practice on the part of the court would have required that in an extraordinary proceeding of this character, the mandate of the Supreme Court should have been made the judgment of the district court at the earliest possible moment reasonably consistent with orderly procedure.

This entire charge involves a technicality on the one hand and a courtesy on the other and is of no particular force in determining the issues presented by the charge. However, it tends to show the feeling on the part of the citizens and the members of the bar toward the presiding judge of the United States court of that district, and, on the other hand, it shows the partisanship of the judge toward a matter over which he had no jurisdiction and his prejudice against the local authorities of the city of Macon. Litigants and counsel for years have been contending in a court toward which they felt as shown in this particular instance and before a judge who felt toward them as shown by this particular case, and the result has been the unpleasant situation in which the judge of that court finds himself to-day and the very unsatisfactory condition in which the Government of the United States finds one of its dignified courts.

The charge that the judge is guilty of unlawful and corrupt conduct in proceedings in cases wherein his son-in-law had a contingent fee, is not sustained, except to the extent in bankruptcy cases heretofore specified and in the one particular case where opposing counsel discussed whether or not the point should be raised and concluded not to raise it.

The corrupt and unwarranted abuse of official authority in using court officials who were paid by the Government as private servants without rendering any service to the Government, is not sustained to the extent that the subcommittee feels it should be made the basis of an article of impeachment.

The charge that the judge has been guilty of oppressive and corrupt conduct in allowing the dissipation of assets of bankruptcy estates by the employment of unnecessary officials and the payment of excessive fees, is not sustained to the extent that the subcommittee feels it should be made the basis of an article of impeachment, although the subcommittee feels that the administration of cases in Judge Speer's court and the dissipation of assets in bankruptcy matters is deplorable.

The charge of oppressive and corrupt abuses in granting orders appointing receivers for property without notice to the owners and without just cause, resulting in great loss to the parties, is not sustained to the extent that the subcommittee feels it should be made the basis of an article of impeachment, as well as of the charge of refusing to allow the dismissal of litigation, for the purpose of permitting relatives and favorites to profit by the receipt of large fees.

However, in these several cases, while the committee feels that the evidence is insufficient to sustain articles of impeachment, we do feel that the judge's conduct has been injudicial to the extent of warranting severe criticism of his acts with reference to these particular charges. It appears in several cases that where large estates were gotten into court it was extremely difficult and intensely expensive to get them out, more so than would be in a court where law and equity should reign supreme.

The circuit court of appeals found it necessary frequently to criticise Judge Speer for the improvident and reckless issuing of injunctions, but this warning seems to have had no effect upon him.

The charge that the judge was guilty of improper if not corrupt abuse in taking, or causing to be taken, money from the court fund for his personal use, is not sustained. The evidence upon this charge is quite unsatisfactory. The judge did procure a loan from a Mr. King, who, many years ago, was the clerk of his court, but is now deceased. A number of years after the clerk demanded his money and was paid. The notes and correspondence were exhibited to the committee, copies of which will be found among the exhibits in this case. While it is an established fact that the judge did borrow money from the clerk, the record shows that the loan was made by the clerk in his individual capacity and not officially, and if the funds which were loaned were the court funds appropriated for that purpose by the clerk, the subcommittee was unable to procure any evidence to the effect that Judge Speer knew that the funds which he borrowed were court funds.

The subcommittee feels that the charge that the judge was guilty of oppressive conduct in entertaining matters beyond his jurisdiction, fining parties and the like, is not sustained to the extent which the subcommittee feels would warrant recommending it as the basis of an article of impeachment. But the record does show that it was not an unusual thing for the judge to entertain jurisdiction in cases over which it was clear he had no jurisdiction; that he recklessly and indiscreetly announced from the bench that he would impose fines upon parties; that he did not do so except in rare instances and particularly a case where he presumed to regulate the janitors of the building by fining them for contempt of court for failing to clean the spittoon, or the court room, or his chambers, which he and his counsel contend was a joke, and the fine was paid by the judge himself, and yet it was a most indiscreet and unwarranted abuse of the high prerogatives of the court.

The charge that he was guilty of unlawful and oppressive conduct in disregarding the mandate of the circuit court of appeals is not sustained to the extent that the subcommittee feels should be made the basis of an article of impeachment.

When it was presented he was at his summer home in Mount Airy, Ga., outside his district. He stated that he would be in Savannah on a certain day, at which time he would hear counsel upon the question as to whether or not the circuit court of appeals had the power to reverse the judgment of his court in that particular case. In this way he held up the mandate of the circuit court of appeals until a new proceeding, avoiding the errors which intervened in the original proceeding, could be started and a new injunction granted before the date set by him when he would hear counsel upon the motion to make the mandate of the circuit court of appeals the judgment of his court. Judge Speer's conduct with reference to this equity proceeding is illustrative of the peculiar temperament of the individual and the high esteem in which he holds himself. The tremendous powers and the wide discretion conferred upon judges of the United States courts by law for the protection of the people, their rights and properties, seems to have been appropriated by Judge Speer for the purpose of impressing upon all those with whom he comes in contact, officially and otherwise, with his great personal superiority. No corruption is shown in the equity case. Apparently it was considered by the judge that his will was the law in the southern district of Georgia, and he denied even the right of the circuit court of appeals for the circuit in which his district was located to question that fact.

The charge that Judge Speer has been guilty of oppressive conduct in allowing money to remain on deposit without interest in banks in which relatives and friends were interested is not sustained to the extent that the subcommittee feels it would be warranted in recommending it as the basis of an article of impeachment. Large funds were permitted to accumulate and remain in the bank in Macon in which relatives and court officials were interested. However, the evidence upon this question tends rather to show that there was negligence in the management of those court funds on the part of the court rather than corruption.

The charge that Judge Speer has been guilty of allowing excessive fees to receivers in cases and other improper allowances as court costs is not sustained to the extent which the committee feels would

be sufficient to sustain an article of impeachment, although the committee does feel from the evidence that Judge Speer has been more or less indiscreet in matters of this character. For instance, in the Huff case.

In a creditor's bill upon indebtedness aggregating $3,900, he appointed a receiver to take possession of all of the property and assets of a defendant. These assets aggregated more than $100,000. The proceeding by which this receiver was appointed was attacked and upon review was sustained by Judge Speer, but upon appeal to the United States circuit court of appeals the judgment of Judge Speer was reversed.

In this case a $10,000 fee was allowed complainant's solicitors, but following the appointment of the temporary receiver Judge Speer had an informal conference, procured, by acquiescence, the consent of counsel for Mr. Huff to the appointment of a permanent receiver. The attorneys acted as attorneys for receivers and commissioners throughout the sale of almost $100,000 worth of property, amounting practically to an administration upon the estate of the defendant litigant. However, the court of review disallowed this claim.

The evidence with reference to the Huff case presents a deplorable state of facts and is detailed minutely in other parts of this report. In the first part of the litigation the first great error in the case was made when the temporary receiver was appointed, apparently without cause, but was later acquiesced in tacitly by counsel for Mr. Huff. The subcommittee feels that in this case the great powers of the Federal court should have been exerted in the interest of protecting the estate of Mr. Huff even against the blundering errors of his own counsel handling the case during the earlier stages of its history. It seems to the subcommittee that the rights of Mr. Huff, who is now an octogenarian, were not given any conscientious and meritorious consideration until Mr. Felter, the present attorney general of Georgia, became his counsel.

It is almost incredible that a case such as the Huff case could be permitted to drag its devious way through all the years of its history with insufficient evidence to establish corruption on the part of the presiding judge, where the judge himself is a man of intelligence and experience.

There is not sufficient evidence in connection with the Huff case to show that the management of it, so far as the court is concerned, was for the express purpose of holding the estate in court as a delectable morsel for attorneys and court officers. And yet the files of that case show that upon two claims, one of which was secured, the other whose collectibility was never questioned, both of which aggregated $3,900, could be the means of destroying the accumulations of a lifetime, aggregating more than $100,000. That case has now wended its way through Judge Speer's court with various appeals, in some of which the higher court has criticized the judge's conduct and rulings severely, from the little $3,900 indebtedness to the sale of more than $100,000 worth of property, the accumulation of a tremendous bill of costs, the loss of many years of earnings, with the debts unpaid, and with a fair prospect that nothing will be left for distribution to the original defendant.

This suit was commenced by the filing of a creditor's bill, April 5, 1899, against Mr. W. A. Huff, individually and as trustee for his

children. The original complainants had two claims which aggregated, including interest due up to that date, the sum of $4,922.77. On that bill on an ex parte hearing and without notice to the defendant a receiver was appointed, who took charge of the property, which has since been sold in the progress of the case at $103,000. It has not all been sold yet, however, one piece remaining which is estimated to be worth between $12,000 and $15,000. One of the claims, the principal debt of which was $1,714, was the first lien on a piece of property in the business part of the city of Macon which was afterwards sold in the progress of the case for $21,500. After the suit was commenced, other indebtednesses which were funded were brought in and allowed, not, however, until after the owners of the other indebtedness vigorously fought the receivership with no effect.

The total indebtedness of every kind and character of Mr. Huff at the commencement of the suit was $34,500. The case is still in court, and just prior to the investigation by the subcommittee Attorney General Felter had advised Mr. Huff that it was indeed questionable whether anything would be left for him out of the $103,000 which had been raised from the sale of the property, after paying the debts, accumulated interest, court costs, and other incidental expenses.

Yet after a thorough investigation of the Huff case we do not feel that the evidence is sufficient to sustain an article of impeachment of Judge Speer.

The charge that he attempted to bribe officers appointed to act as custodians is not sustained.

The charge of oppressive conduct in unlawfully seizing and selling property is not sustained to the extent which the committee deemed necessary to sustain an article of impeachment.

The charge of the excessive use of drugs is not sustained. The evidence upon that point shows that for a number of years, probably twice a year, Judge Speer would procure from his druggist a solution of cocaine, ostensibly for treating his hay fever. The evidence upon this point is quite insufficient.

The charge that he was guilty of general and unlawful oppressive conduct for his own private ends is not sustained to the extent necessary to sustain articles of impeachment.

CONCLUSION.

The conclusion of the subcommittee, deduced from the evidence taken and from the construction of the precedents of impeachment trials, is that at the present time satisfactory evidence sufficient to support a conviction upon a trial by the Senate is not obtainable.

In the conduct of the hearings the committee was extremely liberal and did not confine the witnesses to the giving of technically legal evidence. Some evidence of a hearsay nature was received. The committee felt justified in such a course in the light of the fact that it came to the attention of the committee that many witnesses were apprehensive of the consequences of giving evidence against Judge Speer in the event of his acquittal. This feeling and the general disposition on the part of individuals to protect themselves against what was termed the "wrath" of Judge Speer kept from the committee the names of the witnesses and a knowledge of the facts in their possession. Some of the witnesses whose testimony would be absolutely necessary to sustain some of the charges made are dead.

Others have removed from the southern district of Georgia and their whereabouts are unknown.

Another phase of the record is that it details a large number of official acts on the part of Judge Speer which are in themselves legal, yet, when taken together, develop into a system tending to approach a condition of tyranny and oppression. There has been an inequitable exercise of judicial discretion, many instances of which have been frequently criticised where the cases in which they were committed have been reviewed by the courts of appeal, while in others litigants were unable, financially, to prosecute appeals. That the power of the court has been exercised in a despotic and autocratic manner by the judge can not be questioned.

The Jamison case is one of many instances shown by the record where the judge, without taint of individual corruption and with the apparently laudable purpose of purifying the community and inaugurating a civic reform, disregarded the law and apparently considered that the end justified the means.

The record shows instances where the judge sitting in the trial of criminal cases, apparently forced pleas of guilty from defendants or convictions and there is strong evidence tending to show that in one case, at least, he forced innocent parties to enter such pleas through a fear of the consequences in the event of an unfavorable verdict at the hands of a jury presided over by the judge in the manner peculiar to himself.

As was said by the Committee on the Judiciary in reporting a similar case:

> Terror to evildoers, if purchased at the price of judicial fairness and overstrained legal authority, is achieved at too great an expense, for it defeats its own high aim and warps the very fabric of the law itself.
>
> The temptation of an honest judge to
>
> "Wrest once the law to his authority,
> To do a great right—do a little wrong—"
>
> is fraught with such danger to our whole system of remedial justice that it merits the condemnation of every legal mind.

The subcommittee regrets its inability to either recommend a complete acquittal of Judge Speer of all culpability so far as these charges are concerned, on the one hand, or an impeachment on the other. And yet it is persuaded that the competent legal evidence at hand is not sufficient to procure a conviction at the hands of the Senate. But it does feel that the record presents a series of legal oppressions and shows an abuse of judicial discretion which, though falling short of impeachable offenses, demand condemnation and criticism.

If Judge Speer's judicial acts in the future are marked by the rigorous and inflexible harshness shown by this record, these charges hang as a portentous cloud over his court, "impairing his usefulness, impeding the administration of justice, and endangering the integrity of American institutions."

The special subcommittee recommends the adoption of the following resolution:

Resolved, That no further proceedings be had with reference to H. Res. 234.

E. Y. Webb.
Louis FitzHenry.

IN THE MATTER OF THE CHARGES AGAINST HON. EMORY SPEER JUDGE OF THE SOUTHERN DISTRICT OF GEORGIA.

Mr. VOLSTEAD, from the special subcommittee appointed to investigate charges against Judge Speer, submitted the following

MINORITY REPORT.

To the COMMITTEE ON THE JUDICIARY:

The two other members of the subcommittee appointed with me to investigate certain charges against Hon. Emory Speer, judge of the southern district of Georgia, have prepared a report to which my attention has been called. Though a member of that committee, I have not been invited to participate in its preparation and I find on examination that in many respects it does not meet my views either as to facts established by the evidence or the conclusions drawn from the facts and I ask leave to submit this minority report in which it is my purpose to deal briefly with all of the charges and the evidence that has any bearing on those charges.

At the outset it may be remarked that the evidence introduced upon this hearing was nearly all either hearsay or secondary evidence. The contents of the court records were established in nearly every instance by the recollections of witnesses, though the transactions took place many years ago and the records were at hand to show the actual facts, and instead of requiring conclusions to be established by the facts that would point to such conclusions, some party that felt aggrieved was permitted to give his opinion as to the proper conclusions. This short-cut method of arriving at the guilt or innocence of the judge has created a confusion as to the actual facts, that illustrates how dangerous it is to wander very far from the course sanctioned by the experience of long-time usage. No serious attempt has apparently been made to distinguish between a fact established by competent testimony and that resting solely on hearsay or other equally worthless evidence. And throughout the report will be found repeated, reiterated, and emphasized the expressions of all sorts of opinions by disappointed attorneys, who appear to account it a virtue that they are bitterly hostile toward the judge.

If the judge has been guilty of any violation of the law, if he has done anyone any injustice, the law that has been violated can be

pointed out and the injustice that has been done can be specified. This is what our laws require in every case. A man can not be convicted upon the testimony of some one saying that he is guilty. The facts that show guilt must be sworn to, but in this case the great bulk of the testimony and that upon which the majority report predicates nearly all of its criticism is insinuations and opinions. Why should not a judge be protected by the same laws of evidence that protect the humblest citizen? Why should a congressional investigation make him a target against which his bitter and vindictive enemies may direct their poisoned arrows of malice? How the committee can justify this course is not easy to understand. Why should they deny to the judge the presumption of innocence until the facts, not malicious gossip, point to guilt?

The first charge to which the majority report directs attention is an alleged violation of section 67 of the Judicial Code. But in connection with that charge is the further charge that the judge has permitted bankruptcy estates to be dissipated through the allowance of large fees to the firm of Tally & Heyward and other alleged favorites. Mr. Heyward is the judge's son-in-law.

The latter charge will be first considered as the most logical course. It is quite easy to express the opinion that bankruptcy estates have been wasted. That is all of the evidence there is in the record. Yet the report gives countenance to this charge. It is very unfair to thus throw the burden of proof upon the judge. It would be impossible for him to meet the charge except for the fact that all bankruptcy cases are reported to the Attorney General and by comparing the expenses of administration in other districts with the expenses in Judge Speer's district a conclusion can be arrived at.

Statement showing cost of administration of bankruptcy assets for the southern district of Georgia as compared with the district of the residence of each member of the Judiciary Committee of the House of Representatives of the United States.

ATTORNEY GENERAL'S REPORT.

District.	Assets.	Expenses.	Per cent.
1899.			
Judge Spear's district (southern district of Georgia)	$543,166.20	$9,582.74	0.017
Clayton, Alabama	377,830.47	1,248.47	.003
Webb, North Carolina	28,065.87	2,996.31	.106
Carlin, Virginia	227,926.92	3,970.56	.013
Floyd, Arkansas	81,500.00	4,771.00	.057
Thomas, Kentucky	521,268.29	19,571.74	.037
Dupré, Louisiana	702,051.55	4,157.07	.005
McCoy, New Jersey	1,208,846.22	7,691.88	.003
Davis, West Virginia	142,172.42	2,570.23	.017
McGillicuddy, Maine	306,125.43	6,603.33	.021
Beall, Texas	646,915.73	5,707.36	.008
Taggart, Kansas	286,513.66	6,345.80	.021
FitzHenry, Illinois	184,034.13	5,889.55	.032
Carew-Chandler, New York	1,308,830.46	29,718.85	.022
Peterson, Indiana	2,230,617.52	13,899.49	.006
Volstead, Minnesota	2,362,983.62	24,058.49	.010
Nelson, Wisconsin	358,374.21	3,939.60	.010
Morgan, Oklahoma	61,740.09	3,422.85	.055
Danforth, New York	1,308,830.46	29,718.85	.022
Dyer, Missouri	283,110.36	815.14	.002
Graham, Pennsylvania	624,762.31	5,322.59	.008
General average of expenses			.023
Administration in Judge Speer's district at less			.006

Statement showing cost of administration of bankruptcy assets for the southern district of Georgia as compared with the district of the residence of each member of the Judiciary Committee of the House of Representatives of the United States—Continued.

ATTORNEY GENERAL'S REPORT—Continued.

District.	Assets.	Expenses.	Per cent.
1900.			
Judge Speer's district	$319,401.53	$2,041.16	0.006
Clayton, Alabama	75,576.06	579.23	.007
Webb, North Carolina	66,740.93	4,780.89	.071
Floyd, Arkansas	67,741.43	4,516.51	.066
Thomas, Kentucky	799,529.82	18,775.45	.023
Dupré, Louisiana	552,790.04	3,176.70	.005
McCoy, New Jersey	1,209,467.90	7,391.53	.006
Davis, West Virginia	138,119.09	6,180.50	.044
McGillicuddy, Maine	1,264,360.91	8,015.09	.006
Beall, Texas	301,535.27	6,473.17	.021
Taggart, Kansas	191,283.61	4,370.92	.022
FitzHenry, Illinois	121,582.00	8,714.39	.071
Carew-Chandler, New York	6,298,313.59	31,292.09	.004
Peterson, Indiana	606,942.06	6,307.05	.010
Volstead, Minnesota	1,594,844.73	17,102.12	.011
Nelson, Wisconsin	311,141.36	1,792.71	.005
Morgan, Oklahoma	42,228.22	1,318.79	.031
Danforth, New York	286,845.50	3,738.82	.013
Dyer, Missouri	283,110.36	815.14	.002
Graham, Pennsylvania	1,976,424.68	7,769.07	.003
General average of expenses			.020
Administration in southern district of Georgia at less			.014
1901.			
Judge Speer's district	113,939.58	8,881.80	.077
Clayton, Alabama	53,749.25	2,910.30	.054
Webb, North Carolina	21,900.39	3,378.31	.156
Floyd, Arkansas	110,447.39	14,784.39	.133
Thomas, Kentucky	586,544.74	150,535.49	.256
Dupré, Louisiana	57,831.02	789,891.26	13.660
McCoy, New Jersey	50,962.49	7,808.70	.153
Davis, West Virginia	41,797.28	10,048.17	.240
McGillicuddy, Maine	20,241.92	8,754.92	.432
Beall, Texas	368,188.06	15,492.50	.042
Taggart, Kansas	97,837.56	35,847.47	.358
FitzHenry, Illinois	149,448.14	17,247.02	.114
Carew-Chandler, New York	154,913.52	47,561.32	.306
Peterson, Indiana	270,051.64	22,471.77	.083
Volstead, Minnesota	284,828.78	36,982.01	.130
Nelson, Wisconsin	399,128.69	22,298.58	.055
Morgan, Oklahoma	11,656.98	2,574.80	.220
Danforth, New York	346,758.62	45,593.33	.132
Dyer, Missouri	91,669.58	9,063.30	.094
Graham, Pennsylvania	277,067.38	50,100.03	.188
General average of expenses			.813
Administration in southern district of Georgia at less			.736
1902.			
Judge Speer's district	95,121.75	12,104.42	.126
Clayton, Alabama	25,144.54	3,146.88	.121
Webb, North Carolina	38,648.70	5,461.32	.141
Carlin, Virginia	84,304.13	11,323.18	.134
Floyd, Arkansas	55,749.00	4,935.00	.088
Thomas, Kentucky	167,961.30	28,823.88	.171
Dupré, Louisiana	143,018.85	25,520.82	.178
McCoy, New Jersey	104,899.00	21,196.39	.201
Davis, West Virginia	53,989.19	7,954.33	.147
McGillicuddy, Maine	78,211.25	13,516.87	.172
Beal, Texas	179,916.86	7,730.30	.042
Taggart, Kansas	208,870.15	16,016.62	.076
FitzHenry, Illinois	33,676.47	3,104.31	.092
Carew-Chandler, New York	527,441.15	54,067.68	.104
Peterson, Indiana	724,506.03	35,912.74	.049
Volstead, Minnesota	517,127.30	59,796.78	.115
Nelson, Wisconsin	261,518.86	19,742.48	.075
Morgan, Oklahoma	5,103.85	590.10	.154
Danforth, New York	266,153.41	22,385.71	.084
Dyer, Missouri	515,904.25	47,121.63	.091
Graham ,Pennsylvania	466,385.45	77,037.74	.165
General average of expenses			.119
Administration in southern district of Georgia at more			.007

Statement showing cost of administration of bankruptcy assets for the southern district of Georgia as compared with the district of the residence of each member of the Judiciary Committee of the House of Representatives of the United States—Continued.

ATTORNEY GENERAL'S REPORT—Continued.

District.	Assets.	Expenses.	Per cent.
1903.			
Judge Speer's district	$158,984.21	$11,054.44	0.069
Clayton, Alabama	40,040.51	3,255.00	.081
Webb, North Carolina	28,178.31	3,718.89	.132
Carlin, Virginia	68,960.86	7,999.84	.116
Floyd, Arkansas	45,734.52	5,202.82	.113
Thomas, Kentucky	186,092.43	35,066.72	.188
Dupré, Louisiana	69,366.88	16,544.93	.238
McCoy, New Jersey	267,316.43	27,778.13	.103
Davis, West Virginia	32,943.23	6,666.71	.202
McGillicuddy, Maine	104,775.63	17,482.92	.166
Beal, Texas	198,724.19	12,391.80	.062
Taggart, Indiana	175,321.36	17,207.68	.092
FitzHenry, Illinois	110,345.39	17,675.72	.160
Carew-Chandler, New York	678,682.91	116,778.96	.172
Peterson, Indiana	292,089.23	47,655.54	.163
Volstead, Minnesota	347,879.36	51,356.10	.147
Nelson, Wisconsin	77,282.88	13,689.75	.177
Morgan, Oklahoma	13,588.28	2,917.15	.214
Danforth, New York	268,350.51	33,050.81	.123
Dyer, Missouri	347,240.92	63,807.13	.183
Graham, Pennsylvania	313,636.67	84,003.58	.267
General average of expenses			.155
Administration in southern district of Georgia at less			.086
1904.			
Judge Speer's district	327,500.24	12,501.55	.038
Clayton, Alabama	83,541.44	10,683.72	.127
Webb, North Carolina	19,606.15	1,497.86	.086
Carlin, Virginia	114,898.32	22,508.83	.195
Floyd, Arkansas	137,248.50	9,363.15	.068
Thomas, Kentucky	115,305.68	21,998.87	.190
Dupré, Louisiana	60,607.97	17,802.79	.293
McCoy, New Jersey	241,018.01	8,161.67	.033
Davis, West Virginia	90,160.71	15,847.69	.164
McGillicuddy, Maine	102,113.34	24,873.37	.243
Beall, Texas	201,721.53	6,600.86	.032
Taggart, Kansas	92,491.50	11,552.72	.124
FitzHenry, Illinois	43,154.56	7,833.52	.181
Carew-Chandler, New York	1,687,256.10	83,408.84	.049
Peterson, Indiana	351,860.95	41,492.47	.117
Volstead, Minnesota	451,261.33	52,828.75	.117
Nelson, Wisconsin	325,972.48	7,028.15	.021
Morgan, Oklahoma	44,051.22	5,683.06	.129
Danforth, New York	586,459.63	46,733.08	.079
Dyer, Missouri	243,047.00	37,574.37	.154
Graham, Pennsylvania	489,762.20	76,775.10	.156
General average of expenses			.119
Administration in southern district of Georgia at less			.081
1906.			
Judge Speer's district	235,773.27	22,773.00	.096
Clayton, Alabama	160,763.09	8,751.25	.054
Webb, North Carolina	75,328.56	6,559.31	.087
Carlin, Virginia	136,138.32	16,705.43	.122
Floyd, Arkansas	98,368.79	14,400.22	.146
Thomas, Kentucky	116,699.84	21,508.86	.184
Dupré, Louisiana	122,978.60	26,682.60	.216
McCoy, New Jersey	132,242.34	16,735.12	.126
Davis, West Virginia	114,829.83	17,297.97	.159
McGillicuddy, Maine	170,399.84	18,961.30	.111
Beall, Texas	179,210.28	4,431.72	.024
Taggart, Kansas	226,399.12	30,353.03	.134
FitzHenry, Illinois	30,492.11	6,189.98	.203
Carew-Chandler, New York	1,106,631.70	224,443.69	.202
Peterson, Indiana	407,430.27	57,649.07	.141
Volstead, Minnesota	408,761.92	64,574.75	.133
Nelson, Wisconsin	180,610.17	73,910.91	.409
Morgan, Oklahoma	133,757.83	24,312.28	.181
Danforth, New York	455,890.48	74,300.26	.162
Dyer, Missouri	238,598.52	35,605.40	.149
Graham, Pennsylvania	496,797.09	161,091.47	.324
General average of expenses			.165
Administration in southern district of Georgia at less			.069

Statement showing cost of administration of bankruptcy assets for the southern district of Georgia as compared with the district of the residence of each member of the Judiciary Committee of the House of Representatives of the United States—Continued.

ATTORNEY GENERAL'S REPORT—Continued.

District.	Assets.	Expenses.	Per cent.
1907.			
Judge Speer's district	$183,316.63	$17,537.33	0.095
Clayton, Alabama	83,679.12	10,190.10	.121
Webb, North Carolina	90,161.71	13,686.23	.162
Carlin, Virginia	108,061.30	22,018.76	.203
Floyd, Arkansas	75,455.55	10,167.09	.134
Thomas, Kentucky	133,955.94	28,091.87	.209
Dupré, Louisiana	58,233.41	32,133.01	.551
McCoy, New Jersey	325,091.35	32,194.26	.099
Davis, West Virginia	31,125.97	6,176.41	.198
McGillicuddy, Maine	202,257.93	33,471.13	.165
Beall, Texas	58,016.57	4,251.39	.073
Taggart, Kansas	345,337.57	15,084.32	.043
FitzHenry, Illinois	134,160.78	20,777.59	.154
Carew-Chandler, New York	1,478,812.19	311,125.99	.210
Peterson, Indiana	667,376.63	81,945.10	.131
Volstead, Minnesota	675,406.37	103,136.22	.151
Nelson, Wisconsin	815,839.17	94,071.46	.115
Morgan, Oklahoma	85,343.01	25,347.67	.297
Danforth, New York	233,932.61	38,973.57	.166
Dyer, Missouri	941,248.49	58,256.82	.061
Graham, Pennsylvania	817,011.63	153,886.64	.188
General average of expenses			.179
Administration in southern district of Georgia at less			.084
1908.			
Judge Speer's district	244,456.15	27,673.91	.113
Clayton, Alabama	207,455.93	39,813.41	.190
Webb, North Carolina	41,305.94	8,963.11	.216
Carlin, Virginia	122,213.64	23,020.23	.188
Floyd, Arkansas	46,513.65	8,530.43	.185
Thomas, Kentucky	34,344.44	4,327.34	.125
Dupré, Louisiana	123,067.56	31,902.34	.251
McCoy, New Jersey	354,329.83	84,154.34	.237
Davis, West Virginia	313,701.63	24,909.48	.079
McGillicuddy, Maine	103,965.13	33,238.03	.319
Beall, Texas	464,006.14	14,681.47	.031
Taggart, Kansas	319,148.47	60,104.32	.181
FitzHenry, Illinois	367,590.19	41,089.50	.111
Carew-Chandler, New York	1,500,370.19	303,428.05	.202
Peterson, Indiana	606,365.03	96,196.62	.158
Volstead, Minnesota	768,368.25	81,494.26	.105
Nelson, Wisconsin	18,746.68	11,440.53	.610
Morgan, Oklahoma	30,583.28	8,001.37	.264
Danforth, New York	544,987.19	99,773.68	.183
Dyer, Missouri	206,424.24	32,079.24	.155
Graham, Pennsylvania	1,774,757.93	258,116.38	.145
General average of expenses			.197
Administration in southern district of Georgia at less			.084
1909.			
Judge Speer's district	314,070.04	38,552.98	.122
Clayton, Alabama	191,160.00	37,619.00	.196
Webb, North Carolina	76,057.33	9,717.95	.127
Carlin, Virginia	243,369.33	19,371.73	.079
Floyd, Arkansas	40,147.39	9,693.23	.241
Thomas, Kentucky	239,240.94	31,179.91	.130
Dupré, Louisiana	58,418.56	16,673.09	.285
McCoy, New Jersey	156,028.30	25,452.25	.163
Davis, West Virgina	237,291.12	32,401.29	.136
McGillicuddy, Maine	377,385.87	41,282.97	.109
Beall, Texas	434,320.92	39,359.60	.090
Taggart, Kansas	1,320,255.00	83,313.16	.063
FitzHenry, Illinois	184,785.69	34,657.04	.187
Carew-Chandler, New York	1,009,325.95	245,167.94	.242
Peterson, Indiana	301,839.92	53,767.89	.178
Volstead, Minnesota	1,236,452.56	171,887.40	.139
Nelson, Wisconsin	165,981.35	13,331.87	.080
Morgan, Oklahoma	105,763.65	15,001.69	.141
Danforth, New York	364,243.05	65,480.95	.179
Dyer, Missouri	142,533.20	28,783.13	.201
Graham, Pennsylvania	975,174.78	137,608.09	.141
General average of expenses			.159
Administration in southern district of Georgia at less			.037

Statement showing cost of administration of bankruptcy assets for the southern district of Georgia as compared with the district of the residence of each member of the Judiciary Committee of the House of Representatives of the United States—Continued.

ATTORNEY GENERAL'S REPORT—Continued.

District.	Assets.	Expenses.	Per cent.
1910.			
Judge Speer's district	$1,206,718.78	$79,387.39	0.065
Clayton, Alabama	85,017.00	13,520.00	.159
Webb, North Carolina	60,853.22	8,961.98	.146
Carlin, Virginia	162,843.81	25,375.52	.155
Floyd, Arkansas	48,632.94	7,301.36	.150
Thomas, Kentucky	1,088,113.90	159,663.20	.146
Dupré, Louisiana	202,062.23	30,490.24	.150
McCoy New Jersey	336,048.17	86,393.07	.257
Davis, West Virginia	239,196.85	45,825.84	.191
McGillicuddy, Maine	430,341.72	44,613.28	.103
Beall, Texas	500,939.53	29,032.61	.057
Taggart, Kansas	1,359,176.33	257,262.46	.189
FitzHenry, Illinois	115,779.68	30,034.66	.259
Carew-Chandler, New York	8,201,792.17	727,373.19	.088
Peterson, Indiana	615,003.67	96,330.77	.156
Volstead, Minnesota	1,826,484.38	416,353.33	.227
Nelson, Wisconsin	82,416.01	19,239.44	.233
Morgan, Oklahoma	109,718.73	24,017.84	.228
Danforth, New York	395,872.95	69,905.01	.176
Dyer, Missouri	270,856.16	54,662.47	.201
Graham, Pennsylvania	1,406,762.57	315,937.96	.224
General average of expenses			.165
Administration in southern district of Georgia at less			.100
1911.			
Judge Speer's district	284,209.36	62,336.75	.219
Clayton, Alabama	203,701.06	33,891.90	.166
Webb, North Carolina	181,090.72	47,998.96	.265
Carlin, Virginia	238,447.26	37,763.93	.166
Floyd, Arkansas	60,042.55	14,010.47	.233
Thomas, Kentucky	274,973.37		
Dupré, Louisiana	108,131.41	34,885.27	.322
McCoy, New Jersey	146,547.78	44,170.19	.301
Davis, West Virginia	153,730.27	37,287.73	.242
McGillicuddy, Maine	152,000.02	20,348.01	.133
Beall, Texas	406,496.67	44,241.79	.108
Taggart, Kansas	3,052,922.14	216,698.94	.071
FitzHenry, Illinois	168,247.63	23,844.45	.201
Carew-Chandler, New York	7,021,759.68	697,590.67	.099
Peterson, Indiana	896,278.78	118,988.69	.133
Volstead, Minnesota	534,338.85	84,348.54	.157
Nelson, Wisconsin	117,726.87	35,241.00	.299
Morgan, Oklahoma	115,839.40	33,030.63	.285
Danforth, New York	683,066.84	167,375.45	.245
Dyer, Missouri	446,783.34	77,975.83	.174
Graham, Pennsylvania	1,131,436.59	313,711.39	.277
General average of expenses			.199
Administration in southern district of Georgia at more			.025
1912.			
Judge Speer's district	364,090.74	71,095.12	.195
Clayton, Alabama	112,896.52	14,266.30	.126
Webb, North Carolina	517,343.45	48,002.60	.092
Carlin, Virginia	268,178.83	42,669.79	.150
Floyd, Arkansas	217,003.27	22,165.32	.102
Thomas, Kentucky	284,460.35	44,543.64	.156
Dupré, Louisiana	183,646.56	34,934.08	.190
McCoy, New Jersey	1,414,452.51	364,678.92	.257
Davis, West Virginia	460,219.23	88,866.98	.193
McGillicuddy, Maine	217,767.15	21,870.79	.100
Beall, Texas	473,032.37	57,571.52	.121
Taggart, Kansas	414,236.13	81,953.85	.197
FitzHenry, Illinois	84,556.03	16,157.35	.191
Carew-Chandler, New York	3,121,556.68	657,655.32	.210
Peterson, Indiana	740,980.77	110,925.56	.149
Volstead, Minnesota	4,288,989.36	238,810.39	.055
Nelson, Wisconsin	92,301.38	41,293.50	.447
Morgan, Oklahoma	376,114.67	50,552.72	.134
Danforth, New York	1,044,588.73	371,979.12	.355
Dyer, Missouri	444,176.92	140,361.25	.316
Graham, Pennsylvania	1,934,839.52	247,016.67	.127
General average of expenses			.185
Administration in southern district of Georgia at more			.010

GRAND AVERAGES OF EXPENSES.

Grand averages of the districts of the members of the committee for the years from which this statement is made	0.192
For the southern district of Georgia	.095
For the western district of North Carolina, Mr. Webb's district	.137
For the western district of Arkansas, Mr. Floyd's district	.132
For the district of Minnesota, Mr. Volstead's district	.115
For the southern district of Illinois, Mr. FitzHenry's district	.150

Administration in southern district of Georgia was 0.097 less than the average of the several districts making up this statement.

NOTE.—The Attorney General's report for 1905 was not available when this was prepared.

The facts set forth in this comparison are taken from the Attorney General's report and cover 13 years, from 1899 to and including 1912, except 1905. It shows that during these years the expenses in Judge Speer's district were much less than the average of the expenses in these 21 districts. The average of expenses to assets in Judge Speer's district during this period was 0.095, while the average in the other districts was 0.192, or more than twice as much. In only three years did the expenses in Judge Speer's district exceed the average of the other districts, namely, in 1902, 1911, and 1912. The very slight excess over this average in 1911 and 1912 is easily explained by the fact that in 1910 some very large estates were placed in bankruptcy in Judge Speer's district, the assets amounting to $1,206,718.78 (not $206,718.78, as the figures appear in the record), while the expenses of administering this vast sum in 1910 was only about one-third of the average of the expenditures in other districts. Fees for the administration of this asset were no doubt necessarily allowed in 1911 and 1912 and account for this increase. To compare one year with another may be very unfair, but a comparison of a number of years must necessarily bring out the truth.

It would appear that this showing establishes beyond any question that the administration of bankruptcy matters in Judge Speer's court has been conducted much more economically than ordinarily done in other courts. It is contended, however, that there has been an increase in these expenses during the last six years and it is sought to connect that increase with the activities of Talley & Heyward though there is absolutely no testimony upon which to base any such finding. It is true that there has been an increase but it is not an increase that is confined to Judge Speer's district. The Attorney General has called attention to the fact and explained the reasons why there has been this general increase. Herewith is submitted a table showing the increase in the Judge Speer's district and in the districts of the members of this subcommittee and that of Mr. Floyd who was at one time a member thereof. This table does not only show an increase in each one of these districts but shows also that despite the activities of Messrs. Talley & Heyward, the cost of administering bankruptcy estates is less in Judge Speer's district than in any of the other districts referred to. The table follows:

	1899–1904	1906–1912	Increase.
Southern district of Georgia	0.056	0.128	0.072
Western district of North Carolina, Mr. Webb's district	.115	.156	.040
Western district of Arkansas, Mr. Floyd's district	.087	.170	.083
District of Minnesota, Mr. Volstead's district	.088	.138	.050
Southern district of Illinois, Mr. FitzHenry's district	.108	.186	.078

This shows an increase in Judge Speer's district of about 7 per cent during the last six years over the preceding seven years. During the period of 1906 to 1912 the total actual assets realized in the southern district of Georgia were $2,832,634.97.

The total fees of Talley & Heyward and the members of their firm arising from bankruptcy cases from all sources during the six and one-half years of their partnership were as follows:

Talley & Heyward, as attorney	$10,259.59
J. N. Talley, receiver and trustee	4,715.97
J. N. Talley, special master	1,886.50
A. H. Heyward, receiver and trustee	8,064.05
Total	24,926.11

To convict Judge Speer of having caused an increase of 7 per cent in the cost of administration during these years by the allowances made to Talley & Heyward, it would be necessary to prove that these amounted to $198,284.44 of the assets instead of $24,926.11.

From the list of cases furnished by Mr. Talley showing the cases in which he was appointed receiver or elected trustee, it appears that during six and one-half years of the partnership of Talley & Heyward, he was appointed receiver and elected trustee in 7 cases, was appointed receiver in 2 cases in which he was not elected trustee, and was elected trustee in 5 cases in which he was not appointed receiver, thus making a total of 14 cases during the period of six and one-half years in which he acted as receiver or trustee or both. Assuming that there were trustees in 1,500 cases, and this is a low estimate, and receivers in 500 cases, it appears that Mr. Talley was receiver or trustee in less than 1 per cent of the cases, or less than 1 in 100. His compensation as receiver during the six and one-half years amounted to $1,693.63, or less than $300 per year. In the cases in which he was elected trustee his commissions as such amounted to $3,022.34. There is no reason to charge to Judge Speer the election of Mr. Talley as trustee by creditors. This action of the creditors takes place in the referee's office and would in most cases be unknown to Judge Speer. A judge has no right, without cause, to prevent creditors from selecting a trustee of their choice. The commissions were, of course, fixed by the bankruptcy act and in no case by the district judge.

It appears from the same statement that from July 1, 1905, to December 31, 1912, for a period of seven and one-half years, Mr. Heyward was appointed receiver or elected trustee, or both, in 33 cases out of over 2,000, or in about 1½ per cent of the number of cases. It will be noted that in the tabulation the earnings of Mr. Heyward, as receiver and trustee, has been calculated for seven and one-half years instead of six and one-half years, as in the cases with Talley & Heyward. The following cases arose before the formation of the partnership of Talley & Heyward: F. H. Brantley, B. Mandell & Son, Hines & Vaughn, and F. W. Shelton; and the following cases arose during 1913 after the dissolution of the partnership of Talley & Heyward: Hyman Sater, E. E. Cox, and Union Dry Goods Co. The total compensation as receiver and trustee in those cases amounted to $1,472.98. Deducting this from the total amount received by Mr. Heyward during the entire period, we have $8,064.05 as the amount received during the life of the partnership, or an average of about $1,300 per year.

From the list of cases referred to, J. N. Talley, as special master to fix fees, it appears that during the period of six and one-half years he received from that source a total of $1,886.50, or a little over $250 per year. The compensation in these cases was uniformly small and were allowed in pursuance of a practice adopted by Judge Speer shortly after the enactment of the bankruptcy law.

When it is remembered that during the period of six years from 1906 to 1912, $2,832,634.97 was disbursed through the bankruptcy court of the southern district of Georgia, and that on an average of 200 cases a year are disposed of, it is quite evident that Judge Speer was justified in allowing small amounts to masters for the purposes aforesaid. It should be borne in mind that applications are made for compensation by attorneys for bankrupts, attorneys for petitioning creditors, attorneys for trustees, attorneys for receivers, and formerly receivers. On account of the great number of cases it is manifestly true that Judge Speer could not give the necessary time to thoroughly understand the condition of each estate and the character of services rendered by each applicant, and give them due notice and opportunity for taking testimony. No doubt this practice of appointing masters accounts for the fact that the cost in bankruptcy cases in Judge Speer's district appears to have been lower than in most other districts.

Criticism is made because cases were referred to Mr. J. N. Talley as standing master, and that Mr. Heyward received a part of his compensation, and that, therefore, in some way Judge Speer should be held responsible for reprehensible conduct. It appears from the list of cases furnished by Mr. Talley, as standing master, that during the period of his partnership he acted in 12 cases. Four of these, to wit, Barnard & Leas Mfg. Co. *v.* Blanchard, Crawford *v.* McCook, H. H. Tift *v.* Southern Ry. Co. et al., W. L. Bidwell *v.* W. A. Huff, were referred to Mr. Talley before the formation of the partnership of Talley & Heyward. More than one-half of these fees were earned in these cases.

In three other cases fees have not been fixed, to wit, Atlantic Coast Line R. R. Co. *v.* Jackson & Brown, United States *v.* Aycock, and Harnsberger *v.* Kilpatrick. In the latter case Judge Sheppard confirmed the master's report and this was affirmed by both the circuit court of appeals and the Supreme Court of the United States.

In the case of W. J. Oliver *v.* Savannah, Augusta & Northern Railway Co., the only important reference made to Mr. Talley during said period, the reference was by "consent of parties," and his compensation was likewise fixed by "consent of parties." As appears from Mr. Talley's statement, the main issues involved $300,000, and two collateral issues involving $20,000 each. Mr. Talley's report was confirmed by Judge Speer and all three cases were carried to the circuit court of appeals, where his reports were also confirmed.

In the Tift case, after Judge Speer had declined to pass on Mr. Talley's compensation, an agreement and settlement was reached by the parties by which he received $4,000. It appears that nearly all the fees received by Talley as standing master since the formation of the partnership came to him from cases referred to him before its formation or from cases referred to him by consent of parties. The fees paid Talley from cases referred to him without such consent during the partnership amounted to $720; of this amount $500 has

been approved on appeal. As standing master Talley was appointed by the circuit court of appeals and Judge Speer. No law forbade Judge Speer to refer cases to him because of his relationship to Heyward and it would not be fair to discriminate against him on that account. In no case was objection made to such reference.

The majority report appears to base its complaint on the theory that Talley & Heyward secured employment, not because of their capacity to do the work, but because of Mr. Heyward's relationship to the judge. Suppose that this relationship did aid them, how does that contention become material, without showing that Judge Speer favored them improperly in some way? If they were honest, capable attorneys, it would not be corrupt to favor them to the extent of giving them work. It would be necessary to show in addition that he corruptly favored them in his decisions. There is no evidence that he ever did either. Colton Lewis, the examiner of the Department of Justice, spent a great deal of time in trying to establish that the judge gave to Talley & Heyward or to Mr. Heyward appointments or fixed their fees. In his report he states that he did not find any instance where the judge had appointed the firm of Talley & Heyward or Mr. Heyward to any position or fixed the fees of either, nor did the committee discover any instance where that had been done. The judge denied any such charge in his evidence.

There is abundant evidence in the record to show that the firm of Talley & Heyward upon their own merits had a standing that warranted people in intrusting to them the kind of cases in which these fees were earned. This is glossed over in the majority report by the immaterial charge that Mr. Heyward has no capacity as a lawyer, but that is not in point so long as no one disputes the standing and ability of Mr. Talley. Before the partnership was formed Mr. Talley was appointed by Judge Speer referee in the Tift *v.* The Southern Railway Co. case. In this case Talley was allowed by consent of parties a fee of $4,000. Judge Speer had no interest then in appointing him except to secure an honest and able man. No one complained that he failed to measure up to that requirement. No small pettifogger would ever be appointed to such a place. In the case of Oliver *v.* Savannah-Augusta Northern Railway Co., Talley was appointed referee by consent of counsel. His findings were affirmed by the circuit court of appeals. This involved some $340,000. By consent of counsel he was allowed a fee of $3,000. No one can doubt the estimate placed by these parties upon Mr. Talley. That Mr. Heyward is a man of character and pleasing personality is the finding in the majority report and the only evidence against his ability as a lawyer is Mr. Akerman's statement that he does not try cases alone in court, but that is no reason why he was not a valuable member of the firm. The office lawyer is often as valuable as the trial lawyer. That the public has faith in him is amply demonstrated by the record. Despite the finding in the majority report that Mr. Heyward can not prepare a case for trial there is no such evidence.

There is another circumstance that makes plain beyond controversy the estimate placed by the public upon the firm of Talley & Heyward, and that is the fact that they were in a number of instances retained by lawyers to assist them in the trial of cases and a large

part of their fees were earned in cases where they were so employed. Lawyers select men in whom they have confidence; men who can aid them, and they know who is worth employing. The fact that they were so selected in a number of instances appears in the record. S. S. Bennett, division counsel for the Atlantic Coast Line Railway, testified that he employed Mr. Talley because of his familiarity with the Federal practice (787). To overcome the unmistakable inference from that fact malice suggests that the selection was made because the firm was believed to have the ear of the court, but none of the attorneys who employed them testified to any such reason. Talley had been court stenographer for 14 years, for many years he had held the position of standing master of the court appointed by Judge Speer and the judges of the circuit court of appeals. He has lately been appointed referee in bankruptcy by Judge Sheppard. Nearly every lawyer in the district knows Mr. Talley and not one of them but speaks of him in the highest terms, not only of his character, but also of his ability. Why should not this firm of Talley & Heyward have received a fair share of the business? The committee will in vain search the record to find a syllable of evidence that Judge Speer attempted to influence a receiver, trustee, or other party to employ the firm of which his son-in-law was a member, and it is not suggested that Talley & Heyward were employed when the services of attorneys were unnecessary or that they failed to render honest and competent work.

Why, if this firm was unduly favored, was it dissolved?

Talley says that the reason why he dissolved the partnership was because the judge placed so many restrictions upon their firm because of Heyward's relationship to the judge that it interfered with his earnings. (See also Judge Speer's testimony, p. 911.) If Mr. Talley was profiting unduly by his partnership with Mr. Heyward, why did he dissolve it? Did he not dissolve it because he knew that with his acquaintance in every section of the district and his thorough knowledge of Federal practice, he would do better if not hampered by the restrictions placed upon his firm as long as Mr. Heyward was a member of it? It is stated in the majority report that it is reasonable to assume that the firm of Talley & Heyward received from their practice in the Federal court not less than $50,000 during the six and one-half years of the partnership. It is not reasonable to assume anything unsupported by evidence and especially is that true when the assumption is indulged in for the purpose of blaming somebody. I thought every lawyer knew that the law presumed every man to be innocent until proof is produced to show the contrary, but the ordinary rules of evidence appear to be reversed in this case. However, let us assume that this firm received from such practice not only $50,000 but $150,000, how would that be material? These fees were nearly all earned as attorneys. Can it concern the public service that receivers, trustees, and creditors in bankruptcy matters, or other litigants employ this firm? No one questions their honesty or ability in doing the work and the majority report does not point to a case where Judge Speer procured for this firm any such employment or ever fixed their fees for such services.

VIOLATION OF SECTION 67.

In view of the fact that there is no proof that Judge Speer ever appointed Mr. Heyward, his son-in-law, to any position in his court, it does not appear to be necessary to enter into any extended discussion of section 67 of the Judicial Code. This section reads:

> No person shall be appointed to or employed in any office or duty in any court who is related by affinity or consanguinity within the degree of first cousin to the judge of such court.

If this statute applies to receivers and trustees in bankruptcy so as to prohibit the appointment of one related to the judge of a district court, it might prohibit the referees and the creditors in bankruptcy proceedings pending in Judge Speer's district from making these appointments, but as the judge did not appoint Mr. Heyward it could not apply to him until proceedings should be taken to have Mr. Heyward removed. The proper proceeding for a removal in such a case is by an application to the court for that purpose. Seaman *v.* N. W. Mut. L. Ins. Co., 86 Fed., 493. No such application was ever made to Judge Speer. The question has been raised whether a referee is an officer of the district court or a judge of a separate court. If a judge of a separate court, the appointment of Mr. Heyward by a referee would not violate this section. Referees are appointed to have their places of business so located as to accommodate the public. In the absence of the judge, they have nearly all the powers of the district court in bankruptcy matters and actually carry on a bankruptcy court. The statute says that the word "court" may include the "referee," thus recognizing that the referee is authorized to conduct a bankruptcy court. (Sec. 1, bankruptcy act.)

Unless the referee is held to conduct a bankruptcy court (which everybody acquainted with the bankruptcy practice knows that he actually does), the referee would not be forbidden by this section 67 or any other statute to appoint all his own relatives receivers. This would permit the very condition the majority report condemns. Aside from these considerations, is it quite certain that section 67 prohibits the appointment of receivers or trustees related to the judge of a court? Would not its language suggest that it was aimed at what is usually known as the officers of a court, such as marshals, clerks, and their deputies, the bailiffs, criers, and other like employees who perform their duties in court. The section reads that no person shall be appointed to any office or duty in any court. Is a receiver that runs a railroad performing his duty in court? Such receiver may be a corporation. If everyone that for some purpose is called an officer of a court is covered by the prohibition in this section 67, then attorneys related to the judge could not practice before him, still no one has ever imagined that this section applies to attorneys. But it would appear to be entirely unimportant whether the referee is a court or whether the receiver and trustee are officers covered by the language in this section 67. Let us assume, contrary to the evidence, that the judge had violated this statute, then what should be the punishment? Congress did not consider the violation so serious as to deem it necessary to prescribe a penalty for its violation. Does its violation merit one of the most drastic punishments known to the law, that of impeachment? Congress no doubt had in mind that this statute like many other statutes would be enforced by the

parties for whose protection it was enacted just as is the law in regard to the relationship between jurors, attorneys, and parties to a suit. If the parties for whose benefit the law was enacted do not insist upon but waive its protection, no one else can complain.

If parties to a bankruptcy proceeding should consent that some person related to the judge should act as receiver or trustee, and there may be the best of reason why such a person should be appointed, would it not be a cruel injustice to complain and try to impeach a judge because he made the appointment, and would there be any more merit to such a complaint if they consented by their silence? This statute, if it applies at all to receivers or trustees, was enacted for the protection of the parties interested in the bankruptcy proceedings. If they waived that protection, they can not complain. In not a single bankruptcy case has anyone established that the appointment of Mr. Heyward or his firm prejudiced him or caused any loss by reason of Mr. Heyward's relationship to the judge. The parties that do object are rank outsiders, who complain not because of any injury done to them, but because of their malice.

BEACH MANUFACTURING CO. CASE.

The gravamen of the charge against Judge Speer in the Beach Manufacturing Co. case is that he was guilty of indorsing upon a certain order not consented to the words "By consent." A casual examination of the testimony will show that the words complained of speak the actual truth, and that they are entirely immaterial under the facts on any theory.

This was a bankruptcy case in which the judge appointed a receiver without notice. It is quite evident that upon the facts presented in the petition this was a proper appointment. (810 to 812 and 1056.) After this appointment had been made, an application was presented to the court on behalf of the Beach Manufacturing Co. to have the receiver discharged. Pending the hearing upon this application, the moving parties, through one of their attorneys, a Mr. Wilson, made this statement to the court:

> I asked, your honor, a few minutes ago, to "suspend and give us an opportunity to confer with our clients with reference to giving a certain direction to this case," which I now want to be given. We have decided, your honor, to withdraw the application for the discharge of the receiver and feel satisfied with your honor's supervision over the receiver that the rights of the parties in this matter will be protected. Now, if it is necessary for us to consent more fully to the granting of the receiver's certificates to obtain means with which to pay the insurance and take care of the mills, that are absolutely necessary at this time, it is our purpose now to tender, your honor, an order withdrawing the application.

In reply, the court said:

> Prepare the order, gentlemen, and incorporate in the order a provision about the consent of the bankrupt to the issuance of receiver's certificates.

Wilson then added:

> I would like to look into that.

To which the court responded:

> You may confer about that; the present motion is dismissed.

This statement of Mr. Wilson was a distinct notice to the court that the parties to this proceeding would agree on the form of an order to be entered in the matter and in accordance with the notice

an order was prepared and submitted to the court for signature. Was this order consented to by the parties? Isaacs, one of the attorneys for the creditors, drew the order. Mr. Edwards says that objection was made to the first order drawn by Mr. Isaacs because it conveyed the idea that the attorneys for the Beach Manufacturing Co. had consented to the issuance of receiver's certificates; the carrying on of business as a going concern by the receiver, and that it consented to the receivership. To avoid these objections Isaacs redrew the order. Of the order as redrawn Mr. Edwards said that it met their approval as far as it well could, and that the only difference between the order that he consented to and the order signed by the judge is that the latter contains the indorsement "By consent" just ahead of the signature. Mr. Edwards must be in error when he says that objection was made because the order as first drawn had the attorneys for the Beach Manufacturing Co. consent to the issue of receiver's certificates. Such an order could not have been made without consent as no application had been made for it, and the order to which Mr. Edwards did consent expressly recites such consent without reference to the words in dispute. (See 945–947.) Mr. Lamden disagrees with Mr. Edwards. He says that the only objection to the order as first drawn by Mr. Isaacs was that in its second paragraph it said that the appointment of the receiver and the confirmation of his prior appointment were by consent of parties. Mr. Lamden agrees with Mr. Edwards that the attorneys for the parties, including himself, consented to the order just as it appears on the record except that it did not have indorsed thereon the words "By consent" above the judge's signature.

On page 814 he says, "We consented to the order just as it reads, but not where the order says 'By consent.'" Mr. Padget corroborates this statement (p. 822). Speaking of this order, he says: "Yes, sir; that is the one. I walked out of the courtroom into the hall and met Isaacs, who was coming down the hallway, and I asked him if he would let me read the order. He handed it to me, and it was done in his hand, and I stood there with Charles Edwards and read the order. There was a certain part of the order in there with reference to having to operate the business by consent, and I said, 'Well, I did not understand that he had consented to that.' The only thing I understood that we had consented to was the issuance of a thousand dollars' worth of receivership certificates, but I said, 'Well, I reckon it don't make much difference anyway.'"

He says further that at this time the order had been signed by Judge Speer, but that it did not contain the words "By consent." All the witnesses agree that this was, in fact, a consent order, but two of them, Mr. Edwards and Mr. Padget, insist that they saw the order after it had been signed by the judge and that it did not then contain the words "By consent" at the end of the order. It is quite evident that these parties are mistaken. It must have been the original draft that they saw and not the final order. They examined the order together at the same time. Mr. Padget says that when Mr. Isaacs handed him the order for examination it was done in his hand. The order complained of is in typewriting, hence the one examined could not have been the order complained of. This is also confirmed by Padget's statement that the order he examined provided that the business was to be operated by consent. The order

finally signed makes no such provision unless the words complained of were then on the order.

Strange that these parties should disagree, but this testimony is entirely immaterial on any theory. Without considering the words in dispute, the order which all parties say they agreed to expressly confirms the appointment of the receiver. Here is the language used in the order: "It is ordered and adjudged that the order of appointment appointing Rufus L. Moss as receiver be, and is hereby, confirmed and said Rufus L. Moss is hereby appointed permanent receiver." See page 946 of the record, where is found a copy of the order. How anyone can urge that the words complained of affect in the slightest degree the rights of the parties seems strange. Judge Speer testified that he placed the words "By consent" at the bottom of the order at the time he signed it because it was a consent order. That this was in fact such an order is not disputed by anyone. It was made without a formal application or showing on an agreement of parties in court. Let us assume that the judge had not written these words upon the order, but that the clerk of court had, in accordance with his plain duty, made a record of the actual facts, would not those facts have shown just as conclusively that this was a consent order as do the words complained of? But let us assume they did not consent. This order recites that it was made in open court. Of that recital all parties had notice. The Beach Manufacturing Co. were there by their attorneys and made no objection to an order that in express terms confirmed the previous appointment of a receiver. Not only did they not object, but they did, in fact, lead the court to believe that they did consent. How can they be heard to object? In Huff *v.* Bidwell (151 Fed., 563) the circuit court of appeals held the appointment of a receiver a consent appointment, because defendant's attorney was present in court and did not object. In that case the court found that there was otherwise no sufficient reason for the appointment. This doctrine appears to be conclusive of the question.

The statement in the majority report that the Beach Manufacturing Co. was a large and prosperous concern is rather amusing. The Beach Manufacturing Co. owned a large body of land in Florida which it had been trying to sell to an insolvent concern on five years' time; this land had been sold for taxes and the time for redemption was near at hand. It owned a plantation and some timberland in Camden County, Ga., and a large sawmill in New Lacey, Appleton County, Ga. At the time the application for a receiver in bankruptcy was filed it had ceased regular operations of its sawmill. Its laborers had refused to work unless paid each night for the day's work. The company owed then several thousand dollars for wages. Fifty mules were without feed, although feedstuff was in the depot on which the company was not able to pay the freight. The property was without insurance. There were 40 or 50 judgments against them and a large number of suits pending in the State courts. They had default on the issue of $170,000 in bonds, but the 30 days of grace allowed by the mortgage had not expired. Outside of this mortgage debt they owed a hundred thousand dollars. If this is a prosperous concern, I am sure the mules, the laborers, and creditors did not think so. (811, 812, and 1057.)

It is true that when the question was submitted to a jury it was found by their verdict that the concern had enough property to pay

their debts, but the judge who tried the case (and it was not Judge Speer) at once placed them back in the hands of a receiver. If Judge Speer had made the last order, how gleefully would it not have been pointed to as a demonstration of arbitrary and corrupt conduct. The majority report claims that there was an offer of settlement in this case. If there is anything in the record to show any such offer, I would like to have some one point it out. The statement that Mr. Lamden testified that the jury found that this company had assets of $350,000 or $400,000 and that the indebtedness amounted to only $270,000 is not in the record and is an error. And there is no such evidence in the record despite the finding of the majority to the contrary. There is also a strange omission in the majority report of Mr. Lamden's testimony. Attention is called to the fact that he said a prior application was made to have this company put into bankruptcy, but the reasons he gave why this application was necessarily dismissed was not considered worthy of notice; (799) still the fact that Talley and Heyward were then the attorneys for the company is mentioned. Why was not the fact mentioned that Isaacs & Heyward were associated in this case with another attorney, which Mr. Lamden said was a man of the highest character? (811.) And why was not the evidence of Mr. Lamden and others which shows clearly that there was a necessity for the appointment of a receiver placed in the finding instead of the opinion to the contrary expressed by disappointed attorneys? And why does the majority report omit any mention of the fact that though the jury did find that this company was solvent Judge Neuman at once placed it back in the hands of a receiver?

McREYNOLDS VS. THE CITY & SUBURBAN RY. CO.

Very little need be said in regard to the action of McReynolds *v.* The City & Suburban Railway Co., which was started about 20 years ago. The same policy has been pursued in this as in nearly all other suits. Instead of presenting to the committee the records upon which the judge acted, Osborne, Lawrence, Padgett, Felder, Akerman, or some other disappointed attorney swears that there was no justification for the judge's action. These attorneys had ample notice of the hearing; they are the moving force behind these complaints. Why do they not present the actual evidence; evidence that would be competent in a court? Oh, no; that would be too tame and it would not serve their purpose. From the statement of Mr. Osborne, it would appear that this railway company was being wrecked in two ways. It was charging as low as half a cent a fare for rides, and a Mr. Parsons, who owned most of the capital stock, was trying to take the road away from the creditors in rebuilding it as an electric line. The suit was brought by a bondholder on behalf of himself and all other creditors to protect their interests. Osborne complains that a receiver was appointed without notice and the company was required to put up a bond of $250,000 to secure the discharge of the receiver. He admits, however, that outside of paying the expense of the suit no harm was done to the property. He might as well have admitted that it did establish that Mr. Parsons could not steal this road away from the creditors and could not run it so as to ruin the property; that was what the suit prevented. When a person is actually engaged in robbing a property, as it is admitted Mr. Parsons and this

company were doing, they can not complain if the court acts promptly in preventing it.

This case illustrates the utter recklessness of Mr. Osborne as a witness. He tried to leave the impression that Judge Speer demanded a bond of $250,000 to secure an indebtedness of $2,000, but when questioned admitted that the action was brought on behalf of all creditors. There were $250,000 of these bonds and possibly other debts. But perhaps the most ridiculous part of Mr. Osborne's performance in connection with this case is his attempt to show that the judge knew that this suit was not brought in good faith. For that purpose he goes on and details a lot of facts in regard to plaintiff's impecunious condition and his relationship to a party interested in a competing railway that Mr. Parsons and his client were fast putting out of business. How the judge could know those facts when he made this order does not appear. Mr. Osborne had to make a trip into Tennessee after the order had been made to find out these facts. There is no claim that the papers upon which the judge acted contained any such information. That the plaintiff owned the bonds is not disputed. As such he had a right to bring the suit. The fact that it might assist one of his relatives would not be to his discredit and would not justify the court in refusing relief. No allegation of insolvency is necessary where an action is brought, as in this case, to protect the property upon which the bonds were secured. The statement of Osborne that the $250,000 bond was taken to secure a debt of $2,000 is bad enough, but it is not quite as bad as the statement in the majority report that it was demanded to secure costs amounting to $1,300. It should be noted with what industrious care nearly every fact that would tend to explain away the charge appear to have been omitted, not only from the summary of the evidence, but also from the findings in the majority report.

CENTRAL RY. CO. CASE.

The Central Railroad Co. case is fully explained in the brief of Judge Speer (p. 1029). That case was disposed of some 20 years ago. The president of the company was appointed temporary receiver under an order which directed him to carry on the business as usual without even changing books of account. This order is complained of as unauthorized. On an order to show cause why the receivership should not be made permanent Judges Speer and Pardee sat together. This was only a few days after the temporary receiver had been appointed. The two judges concurred in the appointment of permanent receivers. Between the appointment of the temporary and permanent receivers there had been no change in the situation. If Judge Speer was wrong, Judge Pardee was also wrong. It is true that some years afterwards Judge Jackson disagreed with Judges Speer and Pardee, but his views have since been reversed by the Supreme Court of the United States and the views of Judges Speer and Pardee sustained. He practically held the State antitrust act and the Sherman law void, and for that reason decided that there were no equities in the bill. There is no contention that the Central was not being robbed under a void lease to the Richmond & Danville Railway

Co., that its rolling stock and even its rails and all its earnings were being stolen from it by the defendants.

This suit forced an abandonment of this lease which was in violation of the State's antitrust statute and in violation of the Sherman law, and suits were thereupon brought under which the Central recovered much of this plunder. The claim that the action of Judge Speer ruined the company is met by the statement of Judge Jackson in holding that the company was insolvent and a mere shell a year before this action was started. The company that operated the Central was insolvent and the Central itself was insolvent, and still Mr. Lawton now thinks that the Central could have avoided a receivership through the panic of 1893 if Judge Speer would only have allowed the defendants to continue to rob it. This testimony looks a good deal like the ordinary expert testimony. By turning to the record it will be found that the attorneys who gave this testimony have strangely changed their views on this subject. They have commended the judge's action strongly, now they condemn him (1038). The charge in connection with this litigation rests upon the testimony of Mr. Lawton, vice president and general counsel of the Central of Georgia Railway Co. and his associate, Mr. Cunningham. In 1892 this same Lawton and Cunningham issued a printed pamphlet containing a number of the decisions of Judge Speer at the conclusion of which they commended the judge and his conduct on the bench in the most emphatic language. The thing was then fresh in their minds, and it is evident that if any wrong was done their hindsight is better than their foresight. (1038.) This was one of the first cases under the Sherman Antitrust Act. Judge Speer's action broke up a consolidation of practically all competing railways in the State. Mr. Lawton's complaint will not change the verdict of approval that the people of Georgia has placed on this act of the judge.

HUFF CASE.

The so-called Huff case is an illustration of how a dissatisfied and defeated litigant and his attorney sometimes swear at the judge or jury. Nearly every feature of this long and varied litigation has been in the circuit court of appeals, and there the judge's orders and decrees have been affirmed except in one or two minor matters. The appointment of a temporary receiver was disapproved of by the circuit court of appeals, but Mr. Huff can not seriously complain, as he never made any motion to have this receiver discharged. He served for three years and a half and when at the end of that time application was made for a permanent receiver, he sat quietly by, though in court with his attorneys, and allowed a permanent receiver to be appointed, and thus, as the circuit court of appeals found, consented to the appointment. This receivership, no doubt, saved to Huff whatever is left of his property. The record shows that at the time the temporary receiver was appointed all of Mr. Huff's property was so badly incumbered by all sorts of conflicting claims that nothing but a receivership could have saved it from being sacrificed at execution or judicial sales. The receivership gave time to adjust these claims and but for Mr. Huff's persistent appeals the case could have been disposed of long ago. The other matters in which Judge Speer was reversed was the attorney's fee in Huff *v.*

Bidwell. In that case the Judge's order was set aside but by a divided court; two of the circuit judges of appeal differed with Judge Speer while Judge Pardee in a dissenting opinion sustained him.

In this case the amazing statement is made that a debt aggregating $3,900 was the means of destroying the accumulations of a life-time, some $100,000. This is an illustration of how telling a part of the truth can be made to convey an idea entirely different from the actual truth. The owners of this claim of $3,900 brought a suit, but they brought it not only for themselves but also for all other creditors, and instead of $3,900 there was found due in 1912, when the facts were finally ascertained (exclusive of costs and expenses), $54,511.71 to creditors and $20,512.27 for taxes, besides $10,880 paid to a creditor during the pendency of the suit, making a total of $85,964.98. No one has attempted to show that any of these items were not justly due. When this suit was brought Mr. Huff was insolvent, as found by Judge Speer and by the circuit court of appeals. His property was so encumbered by conflicting claims, among which were a great many tax titles, that this sum of $3,900 could not be collected. It was charged that he had abandoned most of his property and was placing what remained beyond the reach of his creditors. No one has or can point to any delay in this protracted litigation caused by Judge Speer. Mr. Huff's property, instead of being sacrificed, brought $31,278 in excess of the highest estimate made by Mr. Huff of its value. No doubt Huff's estimate, made on oath some time before the sale, was as large as he considered it honest to make it.

The criticism against the judge because some of the money remained in the registry of the court without drawing interest, coming as it does from the parties whose duty it was to see that this money drew interest, shows how utterly reckless are the charges. Under the statute the judge could not place this money on interest without an agreement of parties and security for its return (667, 668, and 669). This should have come from Mr. Felder, Huff's attorney, but he never made a move to have any of this money placed at interest. Still he is the one who chiefly complains. He can not thus shift his responsibilty for his own negligence. He admits that he never made any application to have any of this money placed at interest, but he claims that Mr. Huff did. But when Mr. Huff was on the stand he denied that he ever made any (p. 232).

Upon what theory the judge is expected to keep track of what money may be in the registry does not appear, nor is any reason suggested why he should consider it necessary to act as the guardian of Mr. Felder, Huff's attorney. If Mr. Felder does not know enough or does not care enough to protect the interests of his client, Mr. Huff ought to have had another attorney, some one that would have looked after his interests instead of swearing at the court to cover up his own delinquency.

There is no evidence to show that any of the fees were excessive. They were allowed upon evidence introduced and considered by a master at the time. The record does not show what the evidence was.

SELECTION OF JURORS.

The complaint made against the manner in which juries have been selected in Judge Speer's court is fully explained in the judge's brief (pp. 1038–1046). The complaint that grand and petit jurors to attend any term of court were not drawn as required by law is simply a contention on the part of attorneys that they know the law better than the judge. The statute requires that jurors shall be publicly drawn. The judge points out that this does not require that the drawing shall take place in court or that anybody shall be notified of the drawing; but that it must be done in the presence of not less than three persons, as prescribed by court rules. The question of selecting a petit jury for the trial of a case is always a subject that is under the closest scrutiny of the parties to the suit. If anything irregular is done either party can take advantage of it; and it does not appear that in any instance the court has imposed an illegal panel on anyone without his consent, if at all. When Mr. Lawrence made the statement that the judge selected the jury in the Green and Gaynor case from the southwestern part of the district to get men who did not know the judge, he was making a statement that was ridiculously false. Mr. Lawrence was one of the attorneys in that case and knew that the judge made the order excluding jurors from the eastern part of the district where Savannah and Brunswick are located for the reason that people there had become prejudiced in regard to the case. This selection was made upon the application of the district attorney and in accordance with express provisions of law. He was also aware that the circuit court of appeals had held in this very case that the selection of this jury was strictly legal. It is rather amusing to have Mr. Lawrence, who was defeated in that suit, appeal from the circuit court of appeals to Congress on behalf of clients who stole $2,000,000 from the Government and who have been convicted of that theft, not only in Judge Speer's court, but in a number of other courts where the various phases of that controversy were tried. It illustrates his utter recklessness, even to the extent of disregarding consistency. Take, for instance, on page 511, speaking of the judge, he says:

> He don't want them (jurors) from Savannah, because they know him. He likes to get these jurors from away back who don't know him; and that is the reason he drew his jury from away down in southwestern Georgia in the Green and Gaynor case.

How does that square with the charge that he had just made, that in the Crawley case every juror was from Savannah and had been selected from men of such high character that he (the judge) thought that he (Mr. Lawrence) and his partner Osborne, who, he says, were in politics, would not be able to influence them. This expert opinion of Mr. Lawrence is only interesting as proof of his mental condition. The opinion of Akerman, to the effect that a jury could not be legally drawn at Mount Airy, may be interesting but it would appear that the Attorney General of the United States and the judge entertain a different view. The brief on behalf of Judge Speer calls attention to the law on this subject (p. 1046).

The testimony of Mr. Barnes that he (Barnes) tried to manipulate a jury so as to have a colored person drawn does not connect the judge with the matter. If it shows anything it shows that Mr. Akerman rewrote Barnes's return on the venire in the order in which talesmen

had been selected, or, in other words, rewrote the return in accordance with the facts. Mr. Barnes's complaint of what took place in selecting the grand jury in the Green and Gaynor case need hardly be commented on. When that great legal battle was going on Mr. Barnes testified fully to the facts and he now undertakes to change them to feed fat his grudge against the judge. All the questions involved in the selection of that jury were hotly contested in the suit and reviewed by the circuit court of appeals. As has been remarked that court found the jury legal. Malice ought to have enough modesty to accept that as final. Mr. Felder complains that in the case of the United States *v.* Branen, the jury was illegally selected because no jury had been drawn for the term and all the jurors were selected and summoned as talesmen by the marshal. Section 280 of the Judicial Code provides that:

> When from challenge or otherwise there is not a petit jury to determine any civil or criminal case, the marshal or his deputy shall by order of the court in which such defect of jurors happens return jurymen from the bystanders sufficient to complete the panel.

It is argued that this does not apply except in those cases where for some reason a panel that has been drawn does not afford the necessary jurors to make up a full jury, and it is said in support of this view that this code provides that special juries must be returned in accordance with the law of the State. I do not believe that this last contention has any force, as I do not believe that this was a special jury in the sense in which the word "special" is used in the code. The statutes of different States have provisions for the selection of special juries of persons possessing special qualifications or charged with special duties. The code very properly requires that these shall be selected in accordance with the statutes of the States.

As the Federal statutes provide in detail for the selection of both grand and petit juries for ordinary cases, it is quite probable that this section, 280, of the Judicial Code will be held to authorize the act complained of. This statute does not in express terms limit the drawing to talesmen, as statutes of this class usually do. The word "talesman" means a person drawn to make up the deficiency in an existing panel. The language in this statute is broad enough so as to authorize the drawing of a full jury from the bystanders in the absence of any jurors.

It is insinuated in the Branen case that something wrong was done because an order to the marshal was entered nunc pro tunc to make this selection of jurors, but no explanation is offered why this was wrong. The marshal no doubt made the selection, as ordered by the court; he would not make it without such order. If that order had not been entered when it should have been, it was the duty of the court to have it entered when his attention was called to the omission. No one could be prejudiced by the act. But this whole contention is an idle dispute as to what the law is or is not, and has no tendency to show any willful wrongdoing.

JAMISON CASE.

The Jamison habeas corpus case grew out of a statute under which the city recorder of Macon was authorized to summarily try offenders against the ordinances of the city without any written charge and

without a jury, and impose upon the offenders a six months' State prison sentence at hard labor on the public roads.

The county of Bibb, in which the city of Macon is located, had entered into a contract with the city under which it was agreed that if those convicted by the city recorder were sentenced to the county chain gang (a part of the State prison system), the county would pay to the city $8,000 annually for the labor of these prisoners. A young man, as inhuman a wretch as every disgraced a judicial position, was appointed city recorder of Macon a short time before this case arose. He promptly proceeded to fill the Bibb County chain gang. In the month of March, 1904, the month during which Mr. Jamison was sentenced, he sent 149 unfortunate victims to this chain gang.

Jamison, an inoffensive colored person between 55 and 60 years of age, who had been engaged about town in odd jobs like cleaning houses and laying carpets, was arrested charged with being drunk. He was brought before the city recorder and promptly sentenced to the Bibb County chain gang for three months for drunkenness, and because while in this drunken condition he did not while in the barracks speak as politely to the officers in charge of him as they thought he ought to, he was sentenced to an additional four months for using abusive language, making in all seven months at hard labor in the State penitentiary.

Among those not blinded by any selfish interest in the $8,000 a year, there was naturally a good deal of hostility to the system and a good deal of sympathy for the unfortunate victims. While nearly all those sent to the chain gang were colored, occasionally a white person would be drafted in this fashion to do work. About this time a young white boy came to Macon to do some business. When this was finished, and on the same day, he repaired to one of the depots and bought his ticket to return home. The train was late; he sat down in the depot to wait and fell asleep. The train came and left without waking him. An industrious officer looking for a victim gathered him in, and the next morning, regardless of explanations and protests, the city recorder promptly railroaded him into the county chain gang, there to stay for several months. The charge against him was vagrancy. Public indignation, however, soon released him.

When Mr. Jamison was convicted, Mrs. Speer's sympathies were aroused. She knew him; he had done some odd jobs at her home, and she called her husband's attention to the matter. Judge Speer then asked the assistant district attorney, Mr. Akerman, to take some action to release Jamison, upon the ground that he believed the conviction to be void in that the statute under which it was pronounced was in violation of the United States Constitution. Mr. Akerman says the judge suggested to him to bring the proceedings before some State court, but he concluded to bring it before Judge Speer, and presented to him for that purpose a petition for writ of habeas corpus. The writ was issued. Upon a hearing, Judge Speer released Jamison. The United States Supreme Court reversed this order of Judge Speer upon the sole ground that Jamison had not exhausted his remedy in the State courts. The constitutional question involved was not passed on.

On November 24, 1905, the city attorney presented the mandate of the Supreme Court to Judge Speer, who was then hearing some bankruptcy matters at a hotel in Macon, and orally asked the judge to make the judgment of the Supreme Court the judgment of the district court. The judge then stated that the court was not in session, and that he would not entertain any other matter than the bankruptcy cases then being heard, but advised the city attorney to file the papers with the clerk of the court.

The refusal of the judge to at once enter this judgment is charged as an oppressive act. This is a far-fetched conclusion. While the city attorney testified that he believed he made a formal application for the order in question and that he placed the application on file with the clerk of court, the testimony of the clerk showed that there was no record of any such application and that no application could be found in his office. The majority report says this application was found, but I would like to have some one point out in the record where it can be found. What was found was an unsigned order of about half a dozen lines contained in a dirty envelope together with some scraps of papers. This order had never been filed and was no part of the case. The answer of the city attorney in subsequent proceedings against him for contempt shows quite clearly in detailing what took place that he made no written application. (See Record, pp. 153, 154.)

This whole contention is trivial. There is nothing to show that the judge would not have directed the entry of this judgment on the day when the mandate was presented if it had not been for the fact that within five minutes after the mandate had been filed in the clerk's office the city attorney, in contempt of Judge Speer, put the mandate in force by ordering Jamison arrested. On this order he was arrested that very day.

On the morning of the day following Jamison secured another writ of habeas corpus from Hon. W. H. Felton, a State judge. He was held on this writ two days, when he was remanded to the Bibb County chain gang. An appeal was taken from this action of Judge Felton. This exhausted every remedy that Jamison had under the State law, but he still remained in custody. No stay of sentence could be legally had and he was doomed to serve out his sentence pending the hearing on the appeal, unless he could secure relief from the Federal court. Mr. Akerman then on a petition showing the illegality of the sentence and that he had exhausted every remedy under the State law, on the 30th of November, 1905, applied to Judge Speer for another writ of habeas corpus; this was granted, and on the day following, Jamison was again released on bail. These facts are undisputed. How is it fair to call special attention as a cause for complaint to the fact that this mandate was filed on November 24, 1905, and not made the judgment of the court until June 8, 1906? How can an act be oppressive when it was well known that its entry could not possibly affect anything under the sun? The mandate could only set aside the first writ of habeas corpus. Other writs had been issued under which Jamison had a right to be at large, whether this mandate was entered or not, and no one cared what became of it. So far as the city was concerned, the mandate was acted on as in force from the moment it was filed.

Much is made of the charge that the judge exceeded his authority in issuing an order requiring the city attorney to show cause why he should not be punished for contempt because he ordered Jamison arrested before the mandate of the supreme court had been made a judgment of the district court. When the attorney gave that order he was acting on the theory that the judgment of the district court was still in force. He had just asked the judge to set it aside. Whether the judge was justified in refusing is beside the question; the city attorney was clearly in contempt, and on a proper petition from the persons affected might properly issue the order. Akerman as attorney for Jamison made the application for this order. No action was ever taken upon it except to have a hearing. I was afterwards dismissed.

The majority report suggests that this order was issued to oppress the city authorities because ill will existed between the judge and these officers. It is true that those who were interested in collecting $8,000 per annum from the county of Bibb for the labor of these convicts were hostile to the action of the judge, and they did complain not only that he liberated Jamison but four or five others who made like application, but there is not in the record any evidence that the judge had the slightest ill will toward any of the men engaged in enforcing this illegal law.

Let us assume that Judge Speer delayed the entry of this judgment. for the purpose of aiding Jamison. The delay could be of no assistance to anyone else and the only way in which it could aid him would be in giving him more time in which to prepare an application to some State court for relief. Who is this man Jamison? Why, a poor, inoffensive colored person depending upon his own labor for support; a person so destitute of means and credit that he could not raise $60 to relieve himself from a seven months' sentence in the Bibb County chain gang. What powerful, sinister influences were back of this man to induce a Federal judge to act corruptly? Upon this unfortunate victim a sentence had been imposed that was void because of its cruel and barbarous character. Judge Speer was convinced that it was not valid. The Supreme Court of Georgia later sustained him in that view. Is it not far more reasonable to assume that the judge acted from motives of humanity? To give some idea of the character of this punishment and the motives that must have actuated him I quote from his opinion in that case (130 Fed., 351):

> The most cursory view of the evidence in the record will convince the impartial that practically every ignominious mark of infamous punishment is stamped upon the miserable throng in Bibb County chain gang. This is clear from the testimony of the superintendent, E. A. Wimbish, and from the uncontradicted evidence of witnesses who have there expiated their disregard of sundry provisions of the city code. The sufferers wear the typical striped clothing of the penitentiary convict. Iron manacles are riveted upon their legs. These can be removed only by the use of the cold chisel. The irons on each leg are connected by chains. The coarse stripes, thick with the dust and grime of long torrid days of a semitropical summer, or incrusted with the icy mud of winter, are their sleeping clothes when they throw themselves on their pallets of straw in the common stockades at night. They wake, toil, rest, eat, and sleep, to the never-ceasing clanking of the manacles and chains of this involuntary slavery. They progress to and from their work in public, and from the public roads and before the public eye. About them as they sleep, journey, and labor, watch the convict guards, armed with rifle and shotgun. This is to at once make escape impossible, and to make sure the swift thudding of the picks and the rapid flight of the shovels shall never cease. If the guards would hesitate to promptly kill one sentenced for petty violations of city law should he attempt to escape the evidence does not disclose the fact.

And the fact more baleful and more ignominious than all, with each gang stands the whipping boss, with the badge of his authority. This the evidence discloses to be a heavy leather strap about two and a half or three feet long, with solid hand grasp, and with broad, heavy, flexible lash. From the evidence, we may judge the agony inflicted by this implement of torture is not surpassed by the Russian knout, the synonym the world around for merciless corporal punishment. If we may also accept the uncontradicted evidence of the witnesses, it is true that on the Bibb County chain gang for no days is the strap wholly idle, and not infrequently it is fiercely active. One witness, who served many months, testified that if the gang does not work like "fighting fire" (to use his simile) the whipping boss runs down the line, striking with apparent indiscrimination the convicts as they bend to their tasks. Often the whipping is more prolonged and deliberate. At times, according to another witness, also uncontradicted, the convicts when at the stockade are called into the "dog lot." All present, the whipping boss selects the victim in his judgment worthy of punishment. They are called to the stable door, made to lie face downward across the sill, a strong convict holds down the head and shoulders and the boss lays on the lash on the naked body until he thinks the sufferer has been whipped enough. It is but just to Mr. Wimbish to record his statement that he knew nothing of the ceremony. It may be judged from the evidence that it is a whipping more formal and drastic than any other inflicted. Since this is done at the stockade, we may presume that the spectators and guards are the only witnesses, but on the public roads, in the presence of wayfarers and bystanders, often the convict, to use an expression of a witness, "is taken down and whipped." The evidence gives us the account of two white persons who were thus whipped, one a boy with but one arm. For this reason it was not necessary to hold him. He stood and cried as the boss applied the lash. The other white boy was compelled to place his head between the legs of a burley negro convict and was thus immovably held. The punishment will mark the lad with infamy in the minds of his fellows as long as he may live. The offense of one of these lads was "loitering in the depot."

At another point in this opinion will be found the following:

> He [Jamison] applies for the great writ of right, the writ of habeas corpus, and he humbly seeks the portals of that court whose judges are sworn to know no difference between the rich and the poor, where justice ever bends the listening ear to catch the plaint of the humble and the lowly, and through all whose generous and benign jurisprudence is heeded the admonition of the Master: "Inasmuch as ye have done it to one of the least of these my brethren, ye have done it unto Me."

That the judge exhibited some interest in this unfortunate victim of a cruel system is now charged up against him, and this offense is greatly aggravated by the fact that his good wife asked him to do so. I wonder when it became an offense for a person on the bench to be actuated by motives and feelings such as those disclosed in this opinion? Is the inhumanity of the city recorder the sort of impartiality that appeals to the committee? I hope that our country may always have judges whose hearts beat in sympathy with the poor and oppressed.

The action of Judge Speer in this case forced the city of Macon, through public opinion and the law, to have its charter so amended that the city recorder can not now send a person even to the city prison for more than 30 days instead of to the State prison for 6 months.

It is passing strange that in commenting on this Jamison case the majority report repeatedly says that the city officers of Macon were attached for contempt for putting into force the mandate of the Supreme Court, though the testimony establishes that they were not attached, but that a notice was only served upon them to show cause why they should not be attached. All that was done was to give such a notice. No one was restrained of his liberty for a moment. Equally strange is the complaint that this action of Judge Speer in giving this notice prevented the city authorities from putting into effect the judgment of the Supreme Court. The evidence shows, with-

out any contradiction, that the enforcement of this mandate and the judgment of the city recorder were not delayed at all by this notice. The very reason why this notice was served was because the city authorities hastened to put that mandate and judgment into force before they could legally do so; put it in force in absolute contempt of Judge Speer. But what seems still more strange is that this report bemoans the fact that by reason of this notice the judgment of the city recorder has been annulled and that Jamison is still at large. Does anyone imagine that a judgment resting upon a statute declared void by the court of last resort can have any force? If the city authorities of Macon think otherwise, why don't they enforce it? They know better. They know that they would be liable to a suit for false imprisonment if they tried it.

REFUSAL TO RECOGNIZE MANDATE.

In the case of Holst *v.* Savannah Electric Co., the judge is criticized for refusing to put into effect a mandate of the circuit court of appeals that enables some one to bring an action to defeat the effect of the mandate. Two or three weeks' delay did occur before the mandate was put in effect in this case, but there is no evidence of either arbitrary or oppressive conduct.

Mr. John Rourke, a clerk in the office of Osborn & Lawrence, testified (pp. 516-517) that when he presented the mandate to Judge Speer he "became quite indignant, stating 'that the circuit court of appeals had no jurisdiction in the matter,'" but he nowhere gives any evidence that the judge expressed any ill will toward any attorney or party to the action.

The only other witness that referred to the matter was Lawrence (p. 513), but his statement is mere hearsay and besides throws no additional light on the subject.

The statement of Mr. Rourke does not indicate that the judge had any hostile feeling toward any attorney or party to the suit. If he had such hostility, why did he not express that feeling instead of expressing in vigorous language his opinion that the circuit court of appeals had no jurisdiction of this kind of an appeal?

If it was the duty of the judge to pass upon the effect of this mandate (and he was asked to do that in accordance with a practice which prevails in the district) and it clearly appeared to him that the circuit court of appeals had overlooked some limitations upon its powers, would he not be justified in doing just what he did do in the case? This view is consistent with the language of the telegram sent by Mr. Rourke, which the judge is said to have dictated. This telegram reads:

> The court in Savannah not being in session, Judge Speer does not feel at liberty to sign a judgment making the mandate of the circuit court of appeals the judgment of the circuit court. Besides he wishes to hear counsel upon the question "Has the circuit court of appeals jurisdiction to try an appeal involving the constitutional question in this case, and has not the Supreme Court of the United States exclusive jurisdiction?" The court will convene at Savannah on the 28th instant. He would consider a signed consent to waive the question mentioned.

In relation to this matter, I quote from the brief filed on behalf of Judge Speer the following:

> It will be observed that Judge Speer offered to waive the question presented by this telegram on a signed consent of counsel. He doubtless had in mind section 5 of the

act of March 3, 1891 (26 Stat. L., p. 826). This provides for a direct appeal to the Supreme Court "in any case that involves the construction or application of the Constitution of the United States." As this bill charged that the property of the plaintiffs was being practically taken from them without due process of law, and that, too, by the city of Savannah and the electric company, both of which were agencies created by the State law, it seemed to involve the relating clause of the fourteenth amendment. On both grounds, therefore, his hesitation to sign a decree, which would have been a finality, seems justifiable. If, however, he was in error, it was error only. It seems an ugly distortion of these facts, all of which appear from the record and the recited telegram, to charge Judge Speer with defying the mandate of the circuit court of appeals.

Is it not doubtful whether the judge did have the power to make the order requested? He was not holding court; he was not even in his own district. No notice had been served upon the opposing counsel nor had they consented that he might act. This was an equity suit, and the mandate was directed not to him but to the circuit court. I have a letter from the clerk of the United States District Court for the Eastern District of Pennsylvania in which he says that in equity suits:

> The party who succeeds in having the upper court reverse the lower court must file a motion asking that the original decree be vacated and reversed.

This rule would fully justify Judge Speer's action. No motion was filed in this case. Judge Speer had the same right to ask for orderly proceedings as the Pennsylvania Federal courts.

The act in question is perfectly consistent with the kindliest feelings toward the attorneys and parties to the action. If it was hostile to any attorneys, Osborne & Lawrence would be the ones, as they asked to have the mandate enforced. The refusal complained of was in November, 1904. In that same year, only a few months earlier, Osborne & Lawrence had each signed an indorsement in the most eulogistic terms of the judge to secure his appointment to a place on the circuit court of appeals. Is it not reasonable to infer from this that the most friendly relationship existed at this time between the judge and those attorneys? So far as the record shows, nothing had occurred to cause any ill will. The suggestion that the delay was due to the judge's desire to give other parties a chance to bring an action to defeat the effect of the mandate is a mere assumption, unsupported by any evidence. It is true that another action was started, but there is not a word anywhere to indicate that the judge had anything to do about starting it or knew that it was about to be started. His action in this second suit, in which a second restraining order had been issued, demonstrates beyond all question how absolutely unfounded is this whole contention. If actuated by the motives charged against him, why did he not take this suit under advisement and delay action, as he could easily have done? Instead of doing that, he decided it within a day or two after it was submitted to him and decided in favor of Messrs. Osborne & Lawrence and their clients. The mandate of the circuit court of appeals was put in effect by Judge Speer on the first day of the Savannah term of court, November 28, and the second suit, commenced November 26, was dismissed during the first days of December.

The majority of the committee finds that Judge Speer refused to recognize the mandate of the circuit court of appeals in the case of

Bean *v.* Ore and rests that finding upon the testimony of Mr. E. P. Davis. Here is the testimony:

> I was informed by Mr. Smith—my recollection is now—that this occurred, and I am quite sure it was in connection with one rule in that case, and I think it was the mandate of the court, that when he took it before the judge in Augusta to have the mandate of the court made the judgment of this court he declined to entertain it, and that Mr. Smith had to go back to Atlanta and go before the court in Savannah and have the mandate of the court made the judgment. I will not state that as a fact, but that is my recollection. I was not present at the time.

I would like to know on what theory this committee is proceeding. In the first place this finding rests entirely on hearsay; but it is not even supported by that kind of testimony. The witness tells the committee that he does not know whether it was an order or the mandate in this case that the judge refused to recognize, and then the witness winds up by saying that he won't state that as a fact, evidently referring to the whole story. Mr. Davis has very properly been fined for contempt of court. (424.) I do not know whether that was before or after the mandate he was trying to put in effect was issued, but if it was before that time I can see some reason why he might not like to see Judge Speer about anything and why he played Alphonse and Gaston, as he says, with Mr. Smith, in trying to have him present the mandate to the court. Otherwise I can not see why he should confess the unseemly and cravenly cowardice that he parades before the committee.

REVERSALS.

The majority report gives a list of seven cases tried by Judge Speer that have been reversed on appeal. No suggestion is made that any of these cases was not decided honestly. It seems strange that men who have ever had any experience in the trial of lawsuits can refer to the cases as having any bearing on the charges preferred against the judge. No doubt all of the cases were very carefully tried by able counsel who contended—and contended honestly—for the decision rendered by Judge Speer. The law announced in most of these cases is quite familiar. The questions involved were questions as to whether the facts justified the application of the legal principles applied. If law was an exact science there would be no occasion for appellate courts. When a judge erred he should be impeached.

These complaints appear to rest on the theory that if an appellate court finds that a lower court has gone beyond its jurisdiction some culpable act has been established. This is certainly a novel doctrine. Equally novel is the contention that something culpable has been established if in any case a court appoints a receiver without first giving notice. It is the duty of every court to decide whether it has jurisdiction, and it has a right to be mistaken, if it is an honest mistake. It has been the duty of Judge Speer to appoint receivers without first giving notice, and all the public asks is an honest use of that power.

The first and second cases referred to in this enumeration are discussed in the Huff case, page 185 of this report. The case against the Merchants & Miners Transportation Co. was not reversed. The error complained of was held to be immaterial. In this case the defendant was convicted of a violation of the antitrust law. Who has suggested this case as a grievance? In The First National Bank

v. Hopkins the judge was reversed on a mere technicality. When Snodgrass, who made the complaint, undertook to argue it on its merits Judge Speer said it was too plain for argument. After the appeal Snodgrass came to the same conclusion, and settled it by paying the whole claim. In Cabaniss *v.* Reco Mining Co. it was held on appeal that a receiver should not have been appointed. It is urged that Judge Speer defeated this holding and the mandate of the appellate court by appointing a receiver in a bankruptcy proceeding in this same case, the Roger & Joiner Co. case. This contention is absurd. In every bankruptcy proceeding the debtor's property is taken from him and placed in the hands of a receiver or a trustee. The case of Heck *v.* The Joseph Dry Goods Co. is fully discussed in the brief filed on behalf of Judge Speer, pages 1016 and 1017. There is absolutely nothing in any of these cases that can not be duplicated in the record of any judge that has had any service on the bench.

Attention is called in the majority report in connection with these cases to a comment made by Judge Speer upon a statement of Mr. Meldrim, of Savannah. Mr. Meldrim's attention was called to a statement of Colton Lewis to the effect that Judge Speer had been reversed 19 times in 41 appeals. The judge did not make any statement that this was all the cases that had been appealed nor all the cases in which he had been reversed. Mr. Lewis had submitted these figures for the purpose of showing how often the judge had been reversed. Mr. Meldrim did not agree with Mr. Lewis and expressed the opinion that if he had only been reversed in 19 out of 41 appeals it was a good showing. Judge Speer only called attention to this opinion. The report goes on to say that instead of being reversed on an average less than once a year, the average is more than three a year, and that nearly 50 per cent of the cases carried up have been reversed. There is nothing in the record to establish any such fact. But let us assume that the statement is correct—I have not tried to verify it; would not that record be a credible one when you come to consider that the judge, in the course of a year's work, makes hundreds of orders subject to appeal?

NEGLECT OF BUSINESS.

Complaint is made that the judge has neglected court business. It is said there is difficulty in securing the trial of cases and that the judge has been absent from his district some three or four months each year. In support of this charge the majority refers to the testimony of Lawrence, Meldrim, Felder, Akerman, and an affidavit of T. T. Johnson. It is true that Judge Speer has been absent from his district some three or four months every year, but why does not the majority report, in commenting upon this fact, make mention of the reason why? The judge goes up into the near-by mountains in northern Georgia or North Carolina in August or the last days of July and remains there until frost in October or the first days in November because during that time he is not able to remain in his own district on account of hay fever. No one has denied that it is necessary for him to remain away from his district during this period, not even his bitterest enemies. It would be impossible for him to do any work should he remain. In the mountains he is able to work and there, by consent of parties, try a number of cases every summer, besides doing other work. No one could read the evidence which this majority

report purports to give without repeatedly reading the reason for this absence. A glance at the evidence upon which rests the charge that the judge has neglected his duties will further illustrate what reliance should be placed upon this report. Lawrence was asked, "Does he stay here (Savannah) long enough to discharge his duty as judge and clean up the docket?"

To this Lawrence answered:

> I don't know much about his dockets. I generally get my cases tried, because I don't have very many of them here, but I have heard——. I think that is generally the complaint in regard to that; it takes you forever to get a case tried, you see; he don't hold his four terms of court, and only here for trying cases once a year; and he will do this way, for instance, with Mr. Meldrim: He will have a block of cases that it would take a whole railroad to be brought here to try and the cases can not be tried, and it is another year before the cases can be tried, I think, as far as that is concerned.

Evidently Lawrence had no personal grievance. He admits his cases have been tried promptly enough. As we proceed with this report we shall find that he has had at least some of his cases tried too promptly to suit him. He is complaining on behalf of others. He starts out by saying he has "heard" that there has been trouble about getting cases tried, but evidently thinks that statement too strong, so he modifies it by saying that he "thinks" that is the general complaint.

Is he quite certain that he "thinks" there has been complaint? The last part of this testimony would indicate that he only thinks that he thinks so. He refers us to Mr. Meldrim, another attorney, who has had occasion to regret that some of his clients have been brought to trial. He says of Meldrim that he has cases enough so that it requires a whole railroad to bring them in for trial; but, strange as it may seem, Meldrim, with all his cases, gives us no facts upon which to base this complaint. He says that quite often there has been complaint, but he only mentions one case in which he has suffered, and in that case he does not blame the judge (p. 578). If it was true that there was any lack of attention to business on the part of the judge, these men would know all about it. They are the leading attorneys for the railroads and corporations at Savannah. The other witnesses, except Akerman, add nothing. Mr. Felder testified that he had tried one case at the Highlands, outside of the district, and he says he has been at Mount Airy, but for what purpose he does not explain. He makes a great deal of complaint, because he says the judge invited in the ladies to hear the trial at the Highlands; and I notice that the committee considered that of sufficient importance to call attention to it.

Well, if that is a grievance Mr. Felder has my sympathy. I don't see what other relief he can get. When Akerman was asked if the business of the district had been neglected by Judge Speer, he answered that he could not state in regard to anything but criminal business. He said "the moonshine, illicit distilling, and retailing cases had been woefully neglected." As to the others, he made no complaint except that the judge has been absent during a part of each year, but he admitted that he had seen the judge suffer intensely from hay fever, and that in consequence it was necessary for him to be absent. This statement from Akerman, who has been assistant district attorney for many years, and is very bitter against the judge, is pretty good evidence that there has been no neglect of duty, unless it is of the class of cases mentioned. If there had been neglect of

other civil or criminal business he must have known it. Judge Speer explains in his testimony why at one time there was a number of these liquor cases by saying that it was due to the fact that he had no district attorney to prosecute them and could not get them tried on that account. Mr. Akerman does not show any effort on his part to have them tried except at one time when an outside judge was brought in who tried a few cases after the trial of the Green & Gaynor cause, which took three months to try, after which Judge Speer was sick for some time. But why should this class of testimony be considered? Why not bring in the record of how many days Judge Speer holds court each year? That record is public and malice can not distort it. Judge Speer testified this record would show that he actually averaged more than 200 days in open court each year. Add to that 8 holidays and 52 Sundays. What time has he left for vacation and preparing opinions in cases submitted to him. If there had been the slightest merit in this charge, you would have found a congested calendar. No attempt is made to show anything of the kind. Such testimony would not serve the purpose of those pushing these charges. The complaint that the judge did not hold four terms of court each year at Savannah is not accompanied with any showing that any business suffered on that account. Mr. Meldrim was asked:

You mean that Judge Speer never appeared on the dates fixed by law to have court held?

To this he answered:

Mr. Chairman, I would not say that, because that would necessitate thinking upon the general practice of the court, but I think, notwithstanding, in all fairness, this much should be said, that during the fall term our business interests and professional interests were such that, taking it all in all, there would be no object to having cases tried at a later season (p. 1653).

A little later on in his testimony he calls attention to the fact that having four terms fixed by law makes it necessary to file pleadings more promptly than would otherwise be the case, thus hastening trials, and he makes no complaint that not more than two terms have been held at Savannah each year, and there is nothing in the record to show that there was any business that required attention if the terms were held. The Supreme Court of the United States, with a calendar always congested, takes as much and more of a holiday each year than Judge Speer, and they provide no substitute when they adjourn for the summer, which it would appear the committee considers necessary in the case of Judge Speer.

CONTINGENT FEES.

THE BEACH, GRAY, CARTER, AND HESTER CASES.

Meldrim testified that Talley & Heyward appeared for plaintiffs in a false imprisonment case against Mr. Hester, sheriff of Montgomery County, Ga.; that the court adopted plaintiff's view of the case from the start, and his conduct was exceedingly injudicious. Plaintiff recovered a verdict from a jury of $5,000. No specific complaint is made of the charge to the jury or any other specific act. Mr. Meldrim testifies that before the trial commenced he said to Mr. Talley: "Look here, Talley, you and Heyward have a contingent fee in this case and

I have an idea that I won't allow Judge Speer to try it—that I will raise this question." Questioned by Mr. Webb:

"Why? Because Mr. Heyward was a son-in-law of the judge?" Answer: "No; I do not mean to insinuate or suggest that this fact that Heyward was Judge Speer's son-in-law would affect his rulings, but I did not propose to take the chance. Mr. Heyward is an awfully nice young fellow, and Talley and I are good friends; and Talley, with that peculiar smile of his, rather threw up his hands and said, 'Well, you wouldn't do that, would you?' I said, 'No; I don't believe I would go on with the case.' I have perhaps regretted that I did." The charge now made is that the judge's son-in-law had a contingent fee in the case.

This is no doubt true, but there is no intimation that the judge had any notice of that fact; while the defendant's counsel did have such notice and did waive it. It is also quite apparent, not only from Mr. Meldrim's action, but also from his testimony, that he did not believe that such relationship would affect the judge's rulings. In connection with this matter it should be borne in mind that Mr. Heyward took no part in the case. He was not present. Mr. Talley only took a minor part. The man who brought the suit and who was the leading counsel in the case was a Mr. Cohen. Mr. Meldrim testified, in answer to questions from Mr. Calloway: "You knew before the trial that they (Talley and Heyward) had a contingent fee?" Mr. Meldrim: "Only from Mr. Talley." Calloway: "And you did not call that to the attention of the court?" Meldrim: "No, sir; and I make no complaint about that at all." Calloway: "If you did complain of it, it would have been your duty to call it to the attention of the court?" Meldrim: "Yes, sir." (587.) Mr. Meldrim testified further that he had no reason to know that the judge knew that Talley & Heyward had a contingent fee in this case.

The charge that the judge presided in cases in which his son-in-law, Mr. Heyward, had a contingent fee is very fully discussed in the judges' brief (1062–1065). It is not claimed that the judge ever presided in a case in which he knew Mr. Heyward had such a fee unless it can be said that the appearance of Mr. Heyward's firm as attorneys for creditors asking that certain parties be placed in bankruptcy involved a contingent fee. Unless there was a contract fixing the fee at a specified sum, whether the parties were declared bankrupt or not, the attorneys for the petitioning creditors would ordinarily secure larger fees if bankruptcy should be declared, but they would not fail to get a fee as is usual in case of contingent fees. I do not believe that such a fee can be said to be a contingent fee; it is only contingent as to amount. My experience has been, and I believe it is the experience of every lawyer, that a successful issue justifies and is ordinarily rewarded by a larger fee than is a defeat; still, no one would contend that because success gives a larger fee than defeat such increase makes the fee contingent. If the rule that the majority of the committee appear to approve of is to prevail, then no one related to a judge can practice before him. The cases referred to in the evidence in support of this charge are the Beach Manufacturing Co. case, the Gray Lumber Co. case, and the L. Carter case. The Beach Manufacturing Co. case has already been quite fully discussed. In that case a receiver was appointed by Judge Speer, but that appointment did not determine that Mr. Heyward or his firm would

be entitled to any attorneys' fees. It was an order simply to preserve the estate until the question could be decided whether this company was in fact insolvent. Later on the judge made another order in accordance with an agreement of parties that the receiver should be continued and authorized to carry on the business and consent was given to raise money to do so. This is the much-abused order upon which Judge Speer in accordance with the facts indorsed the words "By consent." This order with or without those words could not effect the question of attorneys' fees to Mr. Heyward or his firm. Section 3 of the bankruptcy act makes this clear. To secure such attorneys' fees it is necessary that the debtor must first be declared insolvent. This consent order can only effect the costs to the receiver. If they consented to the receivership they may have to pay such part of his fees as the court may consider proper, but this has nothing to do with attorneys' fees to creditors. The Beach Manufacturing Co. demanded a jury trial on the question of whether they were insolvent or not and the jury found they were not insolvent but that question was not tried by Judge Speer, but the judge who presided at the trial at once put this company back into the hands of a receiver. In none of the proceedings in this case did Judge Speer try any issue that involved the question of attorneys' fees to Mr. Heyward. In the Gray Lumber Co. case pages have been written in the majority report condemning the action of Judge Speer. There is nothing to justify complaint. The officers of the company asked that the company be placed in the hands of a receiver. Against this some of the creditors objected, others consented. A receiver was appointed, but the question of solvency, which would determine the question of attorneys' fees, was not tried by Judge Speer.

The only thing he did was to appoint the receiver. (816 and 817.)

Since the hearing was had in Georgia the question involved in that case has been retried before another judge and Judge Speer's action upheld, which must mean that the jurisdictional facts, the chief bone of contention, have been found to exist. I wonder how the attorneys who vented their spleen on Judge Speer and characterized his action as ridiculous are going to square their views with this new demonstration of the depravity of courts. Why these parties should cite the L. Carter case as a demonstration of favoritism on the part of the judge is more than can be figured out. In that case the only matter that came before the judge was an application by Isaacs & Heyward to appoint a receiver, this application the judge denied. In connection with this the majority report very uncharitably suggests that this application was denied for the reason that Mr. Colton Lewis, the one who investigated these charges for the Department of Justice, was present at the time and thereby in a fashion intimidated the judge to do the right thing. If the judge does a thing which a lot of disappointed attorneys criticize then his action is corrupt, and if he does a thing which they approve of they charge that his motive for even doing that is corrupt. Pretty hard to satisfy. The issue that would determine whether Mr. Heyward's firm should receive any attorneys' fee from either of these companies was not passed on by Judge Speer.

In neither of these cases was Mr. Heyward's firm the only counsel; they were associated in each case with other reputable attorneys who

were present and took part in the proceeding, while Mr. Heyward was not present nor did he take any part in any of these cases (1056 to 1061). The attorneys who opposed Mr. Heyward's firm knew that he was a son-in-law of the judge, but they did not object. Is it not rather mean after having consented to the appearance of Isaacs & Heyward in these cases to in this fashion blame the judge? They know that if they had acted the manly part by objecting to the appearance of Mr. Heyward's firm, the judge would have refused to hear the matter.

FEES TO FAVORITES.

FIXING OF FEES.

The finding that Judge Speer improperly raised the fee of Orville Park, one of the attorneys for the creditors in the White Sulpher Co. bankruptcy matter rests on conjecture and not proof. There is not a word of testimony that indicates that Judge Speer in fixing this fee had in mind granting any favor to Mr. Park. The judge had a right to consider in fixing this fee the additional $3,400 that had been brought into the estate since his fee had been fixed by the referee whether Mr. Park or his firm had taken any part in the proceedings under which it was realized or not. It is a familiar rule that in bankruptcy matters the attorneys for the creditors are paid fees in proportion to the estate involved. It appears that Park, or rather the firm of which he is a member, asked for the increase and submitted in that connection a letter from the referee showing the increase in the estate over and above the amount realized at the time his fees had been fixed by the referee. Upon this showing the judge might very properly have increased the fee of Mr. Park if his services warranted such increase, and there is nothing to show that the fee was not justified. Of the fee that was increased from $350 to $550, the firm of Hardeman, Jones, Park & Johnston only received one-half. Assuming that Park got one-fourth of this one-half, or one-eighth of the $200 increase, $25, it would be pretty small sum for a corrupt payment. In connection with this, it might be recalled that one member of this firm, Mr. Jones, testified against Judge Speer in this hearing. Evidently the firm has not been favored to such an extent that its members have any pecuniary interest in having Judge Speer retained on the bench.

In the Roger & Joiner case, complaint is made that Orville Park, the trustee, was allowed compensation in excess of the amount allowed by law and that the firm of which he was a member was also favored by having their fees raised beyond the amount fixed by the referee. Park was elected trustee by the creditors and Judge Speer had nothing to do with his selection. It is true that he was allowed compensation in excess of that provided by law but the order expressly states that the allowance is made because all the creditors, the only persons interested in opposing such an allowance, consented that it be paid. It is idle to urge that such an order would be illegal. Whatever extra compensation was allowed was deducted out of the sums paid creditors. The creditors simply said to the judge whatever you consider fair pay to Mr. Park, take it out of our pockets and give it to him. The criticism that Mr. Park as trustee employed his own firm and that this firm also had their compensation raised

by the judge is based on a mistake of facts. Park's firm was not his attorneys. The record shows that T. S. Felder, Hardeman, Turner & Jones, Bacon, Miller & Brunson were his attorneys, and it was these attorneys whose fees were raised. Park was not a member of this firm in 1904 when the order in question was made, and there is not a word in the record which supports the unfair insinuation that in 1904 Mr. Park was in any way a favorite of Judge Speer. How these facts can be distorted into a charge of favoritism is strange. Equally strange is the charge in connection with the case of Standard & Son. They charge there is another allowance of illegal and excessive fees. Cook Clayton was not clerk of court at the time these fees were allowed to him and Judge Speer did not allow him a penny; besides, the record shows that the fees were not excessive and were such as allowed by law. These fees were fixed by the referee, J. Ganahl, and afterwards approved by Judge Grubb. Judge Speer had nothing to do with these fees whatever. I am not able to see any relevancy in the comment made upon Exhibit 18 said to be attached to the majority report. If the judge struck out the names of Irwin & Sutton, he only did what he said in his evidence was his custom, not to interfere with receivers in the selection of their own attorneys. Irwin & Sutton were nevertheless the attorneys for the receiver in this case.

The testimony of Mr. Akerman in regard to a certain fee allowed Calloway & Irvine is not only denied by the judge in his testimony, but also disapproved by a letter from Mr. Calloway. Akerman claimed that Judge Speer had taken offense at this firm of attorneys because they had misled him into allowing them a large fee, because he understood they had rendered gratuitous service to his son-in-law, Mr. Heyward, when, in fact, they had received compensation from the estate that was involved. The judge, in this connection, calls attention to the fact that instead of favoring this firm he had, at this time, reduced the fee of $4,500 or $4,000, fixed by a master, and to which no objections had been filed, to about $3,200. This must have been the case to which Mr. Akerman refers. On its face, this story is ridiculous, unless the attorneys were twice paid in the same case and for the same services. If that was true, and such payment was procured through deception, the judge ought to be indignant. If it was not for the same services, can anyone explain how Mr. Heyward was involved or why the judge should be indignant? It is not claimed that the services were rendered for Mr. Heyward as an individual, but in a case where he had no personal interest, but was simply acting as receiver or trustee. As such Mr. Heyward could not possibly profit by having the services rendered gratuitously; but perhaps it is not material that the story is ridiculous, if it blames the judge for something

For information in regard to the complaint of Mr. Burwell see pages 927 and 993. Mr. Burwell was asked if he knew of anything that would show favoritism, and he said he did not. The criticism of Judge Speer because he suggested the employment of Judge Cobb in the Huff case needs no apology. In the difficult litigation, such as was involved in that case, Judge Speer might very properly select a man of the character and ability of Judge Cobb. Judge Speer did not fix the fees of Judge Cobb in this case. The fees were fixed by special master, and no exceptions were taken to the amount. The fact that Judge Cobb did perform services for Judge Speer without demanding pay is no reason why Judge Speer might not very properly appoint

him to perform the duties mentioned. To contend that such an appointment is the slightest evidence of corruption has no merit. No one contends that the appointment of Judge Cobb was not a wise and proper one. That he did his duty honestly and capably stands unchallenged. There is nothing that looks like testimony that would even tend to show that the fees allowed him were excessive. Must a judge hate a man before he can appoint him? Must Judge Speer appoint men such as Snodgrass, Akerman, Lawrence, Osborne, Meldrim, Felder, Padget, or any other enemy for fear that a committee of Congress might find him corrupt. If my friends on this committee know of judges that appoint their bitterest enemies for fear of such charges, they ought to be investigated.

The criticism that Mr. White, the marshal of the district, received fees as receiver in bankruptcy cases is met by the statute that expressly authorizes the appointment of marshals to that office and prescribes their fees. It is said in the report that marshals in other districts turn these fees over to the Government. If the majority members have any evidence upon which any marshal can be convicted of anything as ridiculous as that he certainly ought to be investigated. An attempt has been made to show favoritism on the part of the judge toward Mr. White. To establish this charge every appointment as trustee or receiver that he ever received is charged directly to Judge Speer and every fee paid him is likewise charged as having been allowed by the judge. This is utterly unfair. White explains that several of his appointments were made by referees and that in some instances the parties concerned petitioned for his appointment. Fees were always fixed upon sworn evidence, and the amount allowed was subject to exceptions by the party interested. An apt illustration of this unfair method is the criticism of Mr. L. M. Baker. The concern of which he was a member was put in bankruptcy by Mr. Isaacs as referee. Isaacs appointed Mr. Heyward receiver, the creditors appointed Heyward trustee, and the matter was all settled up and the fees agreed on by the parties and paid, and there is not a word of testimony to show that Judge Speer ever knew of it. It was claimed by the attorney for Judge Speer that he was in Alaska when this happened (pp. 702–707); still Mr. Baker charged Judge Speer with what happened in that case. Mr. Snodgress testified that Talley & Hayward and Haws & Pattle did not earn $2,000 in the Oliver bankruptcy case, but he says he would have taken that fee if he could have got it. Akerman, on the other hand, testified that this fee was not too large (p. 415). When two such friends of Judge Speer disagree, I am inclined to accept the judgment of the master who fixed it and not retry the question, especially as those interested in the bankruptcy estate did not object.

The complaint that Judge Speer raised the fees of others that his son-in-law might profit by it rests upon the testimony of Mr. Akerman alone, and he does not testify to anything of the kind. In the famous Oliver bankruptcy case, the instance relied on, fees were allowed to a large number of attorneys, including the firm of Mr. Heyward, the judge's son-in-law; Akerman testified repeatedly, however, that he did not think the fee allowed Mr. Heyward's firm was excessive. (See p. 415.) Akerman objected to the amount allowed his firm and when he came to present the objections to the court he expressed the opinion that their fees were less in proportion than those allowed other attorneys. All the fees that had been fixed

by a master and the five days allowed, under a standing rule of court within which exceptions could be taken to the amount of the fee, had expired (p. 415). Mr. Akerman could therefore not object to the fee of Mr. Heyward or anyone else except those to his own firm. Proper exceptions had been filed in time in his case. Nor did he express any desire to have the fee of Mr. Heyward or anyone else reduced. It is perfectly clear that he only compared his fee with those allowed other attorneys as an argument for increasing his own and not for reducing the fee of anyone else. The judge did increase Akerman's fee, but Akerman appears to be dissatisfied with the amount allowed. His fee was raised from $200 to $375. Akerman says that he had testified that his fee should be $500 (p. 374). It appears, that notwithstanding that Akerman testified that the fees allowed Mr. Heyward, the judge's son-in-law, were reasonable, and notwithstanding that no objection had or could at that time be made to the allowance fixed by the master as fees to Mr. Heyward and his associates the judge reduced their allowance quite materially. If I remember correctly, the amount deducted for expenses was about equal to the increase allowed Mr. Akerman. The order making these changes was offered in evidence, but I am not able to find it in the record. (See p. 415, where this order is referred to.)

The statement of Mr. Akerman that Judge Speer wanted his son-in-law appointed assistant district attorney is rather amusing. Akerman tells us that the only reason he has for the opinion is that Talley told him that he, Talley, wanted Mr. Heyward appointed, but at the same time said that the judge was opposed to the appointment. After this Mr. Akerman heard that Heyward denounced him. Mr. Akerman then went to Judge Speer and charged him with desiring the appointment. In response to this charge the judge told him that he had nothing whatever to do with the matter and had never asked for the appointment. Upon this testimony Mr. Akerman furnished an expert opinion that Mr. Talley and the judge lied to him. He based his opinion on the claim that this occurrence caused the judge to treat him coolly. Well, Mr. Akerman's own statement would justify some resentment. It is not everybody that likes to have another tell him that he is lying to him. More than likely Mr. Akerman was trying to even up with the judge for having refused his request to consent to have a clerk in Mr. Akerman's office appointed assistant district attorney; a clerk which Mr. Akerman said was incompetent and which the judge said was dishonest (pp. 377–394).

COURT OFFICERS AS PERSONAL SERVANTS.

The claim that Judge Speer has used his court officers as personal servants is only an illustration of the malice so apparent in this case. It appears clearly that the judge had an abundance of servants without using the court officers. They no doubt rendered some slight service at times, but no claim is made that the court business suffered in any way and the judge says that he paid them for all services rendered. Mr. Barnes took occasion in connection with this charge to retail a little of his gossip. While he was going on at a great rate telling the committee about what Mr. Tucker had told him, one of the attorneys for Mr. Speer produced some letters from Mr. Lucius M. Lamar, the United States marshal, appointed

by President Cleveland, under whom this much aggrieved Mr. Tucker did service. These letters which may be found on pages 333–334, show how false was the story of Mr. Tucker and his friend Barnes. The testimony of the judge on this subject is practically undisputed. (See evidence, pp. 893–894.)

THE HARRIS CASE.

The case of Mr. Harris against the judge is simply that of a bankrupt who was defeated by the activities of the judge in his scheme of paying his creditors 21 cents on the dollar instead of 47 cents. The additional 26 cents were secured through the action of the judge in apprising the creditors of their rights to certain property, which Mr. Harris was seeking to save for himself. It is amusing to have this man complain about the fees allowed. The fees were all fixed by consent of parties and approved by a master without objection on the part of anyone. The judge did not fix any of the fees. (368.) Regardless of the fact that these fees were all fixed by agreement of parties, and there is no evidence that any of them were excessive, the majority report insinuates that there was something wrong in the fact that Judge Cobb was paid a fee in this case. The reason assigned is that Judge Cobb at one time appeared for Judge Speer in a probate proceeding in which he was involved, and in that proceeding Judge Cobb did not charge Judge Speer any attorney's fee. Suppose that Judge Speer suggested the employment of Mr. Cobb and had fixed his fee, would it not be as reasonable and sort as well with a spirit of fairness to insinuate that Judge Speer may have made the suggestion of Judge Cobb's employment because he knew that he was a very fine lawyer and a man of the very highest character?

Judge Cobb has occupied a distinguished place on the Supreme Court of Georgia. The insinuation contained in the majority report does not only reflect on Judge Speer, but is as serious a reflection upon the character of Judge Cobb. It is a reflection utterly unjust and indefensible from any viewpoint. This case is more fully discussed in the judge's brief (pp. 1012 to 1016). The criticism of Mr. Akerman, based on the judge's refusal to withdraw from the case when Mr. McNiel filed an affidavit of prejudice, is not important. Mr. Akerman advised the judge that he was not disqualified and the circuit court of appeals held that he was right. In this case Mr. Harris's attorney complained because he did not like the judge's opinion of the law applicable to his case, and hence charged prejudice. Most States provide that a judge must know some law before he becomes a judge. The judge had acquired his views of the law and facts in this case in considering an application properly presented to him for his decision. To prevent him from making a formal order after he had decided the matter, the application was withdrawn to enable Mr. Harris to beat his creditors. Had the judge acquiesced in what his maligners sought to accomplish, he might have been subject to criticism.

SCARBORO CASE.

The Scarboro case illustrates the general methods pursued in this investigation. Instead of trying to get at the actual facts, the judge's

bitterest enemies were allowed to swear to all sorts of hearsay and encouraged to embellish that hearsay with every possible opinion that malice and mendacity could invent. Where witnesses were on hand to disprove this fabric of falsehood, they were kept off the stand on the plea that this was a preliminary hearing and not a trial. Scarboro was indicted for a violation of the national-bank act. He was defended by a number of prominent attorneys. After the case had been on trial for a short time Judge Speer suggested to Mr. Akerman that he thought the defendant guilty and he ought to get an attorney to assist him in the prosecution. The firm of Pope & Bennett were engaged for that purpose. There certainly was nothing improper in this. Mr. Akerman admits that he was overmatched by defendant's counsel. The case dragged on for several days. The defense introduced no evidence. After the case was argued, Mr. Akerman says the judge turned loose in the most teriffic charge against the Government, which was little short of a peremptory instruction for the defense, and added that a copy of this charge is on file in the Department of Justice. When this criticism of the charge was made, Judge Speer arose with a copy of it in his hand and asked leave to read it to show how unjust was this criticism, but he was denied permission, and for some reason the charge has not been printed in the record, though it was introduced in evidence. Still the majority report approves the substance of this criticism. Is there anything fair in such methods?

There is absolutely nothing in the charge to justify this finding. I appeal to the charge itself. Let it be produced. On cross-examination of Mr. Akerman the charge in question was handed to him, and he was asked to point out (see p. 396) in it what was not law, or, if law, not applicable to the evidence, or any unfair statements or undue emphasis, but he was unable to point out a single thing, though he read it over carefully. It would seem that was as complete a refutation of that slander as it well could be. Mr. Akerman made a further complaint. He says that after a mistrial had been declared by the judge, because the jury failed to agree, Mr. White told him that the judge, after being informed that the jury stood 10 to 2 for conviction, directed Mr. White not to let the jury go back to deliberate, but to keep them walking until he could declare a mistrial. This statement is entirely hearsay. Mr. White, who is charged with having made it, flatly contradicts it (p. 483). He explains further that the jury were taken our for a walk and were thereafter taken to a hotel for supper, and that after supper they went back to their jury room for deliberation and remained there for that purpose another half hour before they were taken into the court room, when a mistrial was declared. Riley and Burns, the two officers in charge of this jury, were present before the committee, but neither of them was called to testify.

Instead of the testimony of Mr. Burns, what purports to be an affidavit of his was offered in evidence. I am told that Mr. Burns was subpœnaed as a witness from his home in Florida. That on his arrival at Savannah he was shown the affidavit now in evidence and asked if he could testify to the facts set out in it, and that he refused to do so, saying that it was not true that he had been instructed to keep the jury walking and not take them back to their room for further deliberation. That as soon as it was discovered that he

would not swear to the facts contained in the affidavit, Burns was discharged from further attendance upon the committee and sent home. I was not told whether any member of the committee knew of this occurrence or whether others interested in pushing these charges were responsible for it, but I am sure that Mr. Burns was there in attendance on the committee and that he was sent home without being sworn and his affidavit used in place of his testimony. I am equally sure that Mr. Riley was there and that he was not called nor was Mr. Bitijman. Judge Speer in his testimony emphatically denied giving any such directions, but regardless of this denial by both Mr. White and Judge Speer, the hearsay statement of Mr. Akerman is sufficient to sway the judgment of the majority members of this committee. Is it believed that the Senate will accept such evidence on a charge of impeachment or are these findings only for the purpose of satisfying the malignity of Mr. Speer's enemies? This case was retried before another judge and another mistrial resulted after the jury had been out 96 hours, when the case was dismissed. (See further judge's brief, pp. 1007–1009.)

CHARGES EXCEEDING JURISDICTION IN CASES OF J. T. HILL, GORDON SAUSSY, KAERNEY WRIGHT, AND EMMA POWERS.

The complaint of J. T. Hill does not appeal to my sympathy. His grievance is that the judge issued an order requiring him to show cause why he should not pay over to his client certain money. The papers upon which the judge acted charged that part of this money had been collected by Mr. Hill for his client and that part had been paid him as an attorney's fee, but that Hill had neglected and refused to perform any service for him as such attorney and had refused to pay over the money collected for him or return any part of the attorney's fee, though this money had been demanded. Upon this complaint, which was produced before the committee, but which does not appear in the record, it is clear that the judge had the power to issue the order notwithstanding any finding of the majority members to the contrary. In the case of Jeffries *v.* Lawrier (23 Fed., 786), Judge Brewer issued a like order and on final hearing directed the payment of $4,635.50 from an attorney to his client. The law books are full of like cases, and almost every State has a statute that authorizes this sort of a proceeding. Upon the testimony it is quite clear that Mr. Hill need not play the injured innocent. From his own statement it is apparent that he entirely neglected his client's interests and still retained his money and deprived him of a chance to use that money to secure another lawyer.

The only thing that he did do, according to his own statement, was to spend a few minutes in dictating a petition for a writ of habeas corpus, a petition that he knew, within a few minutes after he had dictated it, was useless. His own evidence is a lame attempt to excuse himself for not having rendered his client the services that he had agreed to render. He shows how he was engaged in court in other matters so as to be prevented, and that on account of his physical condition he was going away to Florida. To add to his unfaithful conduct to his client he even makes a personal attack upon him. For a witness that is willing even to expose his own reprehensible conduct for the purpose of attacking the judge, I can have

nothing but contempt. If there is one thing that lawyers owe to their clients it is absolute loyalty. This matter is more fully discussed in the judge's brief (pp. 1018–1022).

The Kaerney Wright and Emma Powers matters are discussed in the judge's brief (p. 1009), and so is the R. C. Mulhalland matter (p. 1010). That the court had ample power to punish Mulhalland for contempt is evident. The fine of $1 each imposed on Wright and Powers was paid by the judge. Whether he had the power to impose this fine would depend on the circumstances, but conceding that he did not; no harm was intended and none resulted. Mr. E. P. Davis certainly does not make a case against the judge. He was fined for contempt upon his own statement that he had told his client, who was bound over to appear at court, to leave the court in direct violation of his duty to remain there. Why should he not be fined (p. 424)?

Gordon Saussy only attempts to review the action of the judge in ordering him to pay over to a court stenographer the sum of $55 that he had collected from his client for the purpose of making this payment. In this the judge was clearly within his right. (See Wright *v.* Nordland, 58 How., par. 184.) At any rate there is nothing in the contention beyond a dispute as to what the law is or is not (p. 548). The question of jurisdiction was not raised in any of these cases.

REFUSAL TO DISMISS CASES OF ANTON P. WRIGHT AND DAVID C. BARROW.

The matter of which Mr. Wright makes complaint is quite simple. A petition had been presented giving the court jurisdiction of a bankruptcy proceeding. An application was then made for the appointment of a receiver and the judge found that it was a proper case for such an appointment. After this determination had been made, but before the receiver had actually been appointed, Mr. Wright went to the judge and tried to have him dismiss the proceedings so that his client could get a preference over other creditors in violation of the bankruptcy act. It may be that the judge was provoked that an attorney should present such a proposition to him. Had he granted the request, there would have been some real cause for complaint against the judge. Such composition can only be allowed by the creditors in a creditors' meeting called upon proper notice. Clearly, Mr. Wright knew he could not get the other creditors to agree to anything of the kind, but hoped to find a new route around the law by having the court dismiss the proceedings. He appears to find fault now because Mr. White was made receiver, but he admits in his evidence without explanation that he himself wrote the order for the appointment of a receiver and inserted the name of Mr. White as such receiver. Speer did not select Mr. White's attorneys. The complaint of Mr. Davis that the judge would not allow him any fees in his illegal attempt to deprive the Federal court of its jurisdiction in bankruptcy cases has my sympathy, but I doubt that any legal grounds can be suggested why he would be entitled to any such compensation (p. 694).

The majority report refers to the evidence of Mr. David C. Barrow as an illustration of arbitrary conduct. In an equity suit a restraining order was issued against the payment of a sum of money upon which the plaintiff claimed a lien. If this order had not been issued without

notice, it is perfectly evident that the plaintiff would have lost his claim (p. 753). Mr. Barrow, attorney for the defendants, then saw Judge Speer and tried to have him set aside the order without any notice to the plaintiff's attorney. The judge refused this, but granted an order against the plaintiff's attorney requiring him to show cause why the restraining order should not be set aside. How anyone could complain because the judge refused this request is strange. There is no claim that the showing upon which the order was issued was insufficient. Before this order to show cause was heard, plaintiff's and defendants' attorneys entered into a stipulation embodied in a consent order which provided that $3,500 should be paid into court to be held to satisfy plantiff's claim of $3,362 and cost of suit. Upon hearing on the order to show cause, the court released all the money except the $3,500 and refused to issue a temporary injunction. Complaint now is made because the judge did not also release this $3,500, but Barrow admits (p. 754) that he had stipulated that this money should remain in court. Or, to be more accurate, he says it is fair to say that construction could be placed upon the order to which he had consented. I wonder why this bit of testimony, so important in this case, escaped the attention of the majority members in writing their report.

The complaint that Judge Speer allowed certain money to remain on deposit without drawing any interest has already been adverted to and needs no further consideration. (See judge's brief, pp. 1010–1012.)

USE OF DRUGS.

The summary of Mr. Pallou's testimony in regard to the sale of cocaine to Judge Speer has in it some surprising omissions. It appears that during the last 10 years Mr. Pallou has sold to the judge 1 or at most 2 ounces each year of a 3 per cent solution of cocaine; that some years he is not sure that he sold him any; that the judge called it a hay fever solution; and Pallou says he does not know if the judge ever knew that it contained cocaine; that the judge would get it with a lot of other medicine as he was going away to the mountains in the summer on account of his hay fever, or just as he was coming back in the fall. He further testifies that the amount he sold him each year would not last a man addicted to the use of cocaine one day. In summing up the testimony of Dr. Little another strange omission appears in the majority report. He testifies that while Judge Speer was sick he gave him a minimum dose of morphine and atrophine, and that this "absolutely and completely quieted him."

The doctor said in this connection:

> It has come to me in this investigation—I have heard that the judge was addicted to the drug habit from what I consider very irresponsible people. The administration of that hypodermic would have led me to believe that he had taken very little morphine, if any at all, for it was what is known as a minimum dose and its effect was prompt and complete.

Strange how this testimony could have escaped the majority members; testimony, that if true, and there is no doubt of its truth, demonstrates that this charge is unfounded. To bolster up this utterly unsupported charge which Dr. Little says comes from very irresponsible people, the opinions of such enemies of the judge as Akerman, J. R. L. Smith, and H. S. Edwards are submitted. This

is another illustration of the utterly unfair methods employed. The hearing was public. It was held in a court room crowded to the doors. Every enemy of the judge was invited to appear against him. They made no concealment of their hostility; they were with very few exceptions disappointed litigants or attorneys. They emulated each other in making the most extravagant statements and were eagerly urged and coaxed on by the committee to do their worst. A very large part of the testimony is hearsay or oral testimony of the contents of court records. Much of it is a mass of abuse resting on no tangible facts.

In several instances where mere hearsay testimony had been submitted the judge's attorneys would call attention to witnesses present before the committee who knew the actual facts and asked that they be sworn so that the truth might be known, but these were not wanted and were brushed aside upon the theory that this was only a hearing and not a trial. This was illustrated in the King loan matter, in the Scarbora case, and this drug matter is another illustration. Mr. Howard, one of the judge's attorneys (p. 208), called to the committee's attention the fact that Judge Speer's physician, who had treated him for hay fever, was present in court and could testify on this subject, but no attention was paid to his statement. At Macon, while the judge was being severely criticized for his conduct in the Jamison habeas-corpus matter, Judge Felton, the judge of the superior court before whom a writ of habeas corpus had been sued out in that case, after listening apparently with a good deal of disgust to the testimony, approached the committee and asked to be permitted to explain the matter, but he was promptly turned down. As he turned to leave the committee he said, with evident feeling, that if he could not be heard here he knew he could be heard before the Senate. The letter of Mr. Edwards introduced in connection with this cocaine charge does not have the remotest bearing upon it. It could only be put in evidence to allow an old enemy to vent his spleen upon the judge. Edwards's philosophical nonsense about constructive and destructive spirituality and of lapsing of mood and lapsing of memory may be worth reading as a study of his mental condition.

KING LOAN.

The charge that the judge took money out of the court funds for his own use is the unkindest cut of all. The bare hearsay statement of a man dead more than 20 years that he loaned such funds to the judge is apparently credited as evidence against the judge, and this in face of the fact that competent evidence does exist which no doubt absolutely disproves the charge. The judge and his attorneys challenged this committee to examine the records of the court and its registry and explained that these records had been so kept that if a dollar had ever been taken out illegally it would appear. They insisted that the record did show that there was not a word of truth in the accusation. The judge in commenting upon the matter said in substance, as he pointed to persons there in the presence of the committee: "There sits Marion Erwin, who kept the accounts of the clerk and with the registry of the court, and there sits George W. Owens, the standing master in chancery, whose duty it was to

pass upon the accounts of the clerk with the registry of the court, and the officers of the Merchants' National Bank, the registry, a bank whose doors it happens I have never entered, are here." But none of these were asked to testify. Erwin and King were both clerks at the time—one of the circuit and the other of the district court. This loan was made 28 years ago and repaid about 24 years ago and there is not even a suggestion that Judge Speer had any knowledge that any of this money came from court funds and there is not a word of competent evidence that a dollar of it ever came from such funds. The evidence upon which this whole story rests is so contradictory and so clearly false in every particular that it is a demonstration of the corrupt motive of some of those who testified to it. For further details see page 984 and comment upon the testimony of Mr. W. E. Simmons.

OFFER TO ACCEPT BRIBES.

The charge that the judge offered to accept a bribe from Mr. Barnes was emphatically denied by the judge in his testimony (p. 892). This man Barnes while marshal of the district armed himself with a large revolver which he conspicuously displayed as he threatened to kill Judge Speer should he appear in the court room. On account of this threat the judge secured his removal. Anyone who reads his testimony can not fail to note his intense bitterness toward the judge. In the Green & Gaynor case he testified fully as to what took place at the time the jury in that case was drawn. A printed copy of that testimony was presented to the committee. On this hearing he varied and contradicted that testimony, evidently for the purpose of impeaching the conduct of the judge. A person that will perform in that fashion is not entitled to much credit. The story is itself improbable and would not be persuasive if told by a person who could be relied on. What he claims is that when Barnes thanked the judge for what Barnes said was a "little fee," (p. 319) the judge said to him: "What is there in it for me?" Strange the judge should ask for a division of a small fee. If the judge was corruptly inclined, he would not be likely to beg for pennies.

Even if the judge had asked this question, no one with any faith in his honesty would have construed it as Mr. Barnes does. It might be spoken as a friendly banter, as the two were on good terms at that time. If it had been intended as a request for a part of this fee and the judge failed in getting a share, would it not have caused estrangement that would have induced the judge to give his favors to others? Barnes, however, says he continued to appoint him as receiver in various matters as though nothing had happened. Since the hearing in Georgia, I am informed that an affidavit has been filed by one Hester, charging that the judge asked him this very question. Strange that in both of these instances the language should be identical. This affidavit, though it only contains a dozen lines, reveals the fact that Hester is sore at the judge, because he says it clearly appeared that the judge was against him in a suit and he lost it. Here is the setting which he presents: In going to the court room and while he and Judge Speer were going up the steps together the judge said to him: "Mr. Sheriff when a fellow gets into trouble he will carry law books," and he then said, "What is there

in this case for me?" To which Hester says he answered that it did not look as though there was anything in it for anybody.

The insinuation, of course, is that this language was used with the idea of inviting Mr. Hester to pay the judge something for help in the lawsuit. Whatever may have been said, I do not believe that there is a man in Georgia acquainted with Judge Speer, no matter how vindictive he may be, that has any doubt of the judge's personal honesty. Mr. Akerman, who has known Judge Speer intimately for years, and who is perhaps as bitter against the judge as anyone, said in a statement to the Department of Justice, in regard to these charges, "I have never believed and do not believe now that he (Judge Speer) is dishonest or corrupt, in so far as money is involved." From what has developed in this hearing, I am sure that if any proposition had been made to Judge Speer, such as the one he is charged with having invited, the one that made the offer would have promptly gone to jail.

RAILROAD PASSES.

The charge that Judge Speer used railroad passes and occasionally transported, free of charge, some horses and furniture is frankly admitted by the judge. He explains that this was before the passage of the Hepburn Act and before there was any law forbidding the practice. He calls attention to the fact that while he rode free the preachers, the judges of the circuit court of appeals, the judges of the State courts, and members of the State legislature rode free. Col. Lawton, who testified on this subject, corroborated the judge in this statement. He says that passes were furnished to the judges of the circuit court of appeals, the State judges, the governors of States, members of the legislature, and Congressmen (p. 619), but Col. Lawton claimed that the privilege of shipping freight free was not allowed to anyone else. Perhaps that may be true, though the judge expresses some doubt on the subject, and suggests that special cars were furnished free to others. It is, however, well known that it was the custom in those days to give free express franks that would carry practically all sorts of freight. Public sentiment of to-day strongly condemns the practice of accepting free transportation, but that was not true when this transportation was accepted. In view of the bitter hostility of these railroads to the judge as shown in the evidence, it is apparent that free passes did not unduly influence him to favor the donors. One of the charges brought against Judge Swayne, of Florida, was that while a railroad was in the hands of a receiver in his court he accepted a special car and other accommodations from this road. Upon this charge 13 Senators voted for conviction and 69 voted against it.

CRAWLEY & M'CLELLAN CASE.

That there is no merit in the contention in the Crawley & McClellan case is apparent. It is claimed that the judge coerced a plea of guilty from the defendants when they were not, in fact, guilty. This is denied by Mr. Toomer and also by the judge. It is rather surprising that the majority report should place more reliance upon malicious hearsay statements of disappointed attorneys and relatives

of the defendants than upon the testimony of Mr. Toomer, the only witness who testified from personal knowledge of the facts bearing on the real charge. Especially is this true, as Mr. Toomer was the leading attorney for the defendants and would have as strong a reason for resentment against the judge's conduct as any of the other attorneys. This was one of the first peonage cases tried in the South. It had been carefully selected by the Attorney General of the United States after a report by a special examiner. Its trial caused intense bitterness on the part of those interested in maintaining peonage. Hence the fierce denunciation of the judge. The following, from the judge's brief, gives an idea of the evidence:

The facts as developed on the trial of the case were that McClellan was the sheriff of Ware County and also jailer. Crawley was a lawyer. Henry Brunage and Dave Smith, two colored boys, were arrested and tried for stealing a watermelon and were convicted before the judge of the county court of Ware County and sentenced to imprisonment in Ware County with no alternative of fine. Mr. E. J. McRee was asked to come for the boys by Crawley. McRee testified: "I received a letter from Mr. Crawley, which I can not find after a search, in which he asked me to come to Waycross; that there were some boys there who wanted to come to my place." McRee went to Waycross and, accompanied by Crawley and McClellan, went to the jail where the two boys were confined and also found, outside of the jail, Jeff Brunage, a brother of one of the boys in jail. Jeff was not charged with any offense, but "was just out there interceding for them." McRee gave a check for these boys, the check being dated August 6, 1903, for $65, payable to the order of T. J. McClellan, payable at the Citizens Bank of Valdosta, and indorsed by T. J. McClellan. This was to cover the fee of Mr. Crawley, the lawyer, and the jail fees of Mr. McClellan. Although in jail under commitment, and no provision made for release upon the payment of a fine, and no order of any court authorizing their release, the two boys were turned over to Mr. McRee, and not only were they carried to the plantation of the McRee's, at Kinder Lou, but the little brother, who was "interceding for them," was also carried to the plantation, and E. J. McRee afterwards pleaded guilty to holding the three in peonage.

Another of the indictments charged a similar sale of Lula Frazier, who had been arrested for adultery, but on the hearing before the county judge he decided that if she was guilty at all it was of bigamy, of which offense his court did not have jurisdiction. While she was in jail with no charge against her, Mr. Crawley, her lawyer, telephoned to the McRees as follows: "E. J. McRee, Valdosta, Ga.: Come to Waycross for woman. W. F. Crawley." Mr. Frank McRee went to Waycross for her and was accompanied to the jail by Crawley and McClellan, the latter being the jailer. McRee gave a draft for $50 to Crawley, and the woman was released and carried to the Kinder Lou plantation in Lowndes County. This draft was dated August 27, 1902, payable to W. F. Crawley, for $50, drawn on the Citizens' Bank of Valdosta, and signed by Kinder Lou Mills, by F. I. McRee.

Other checks were tendered in evidence, in payment for other negroes, one for $88, payable to T. J. McClellan, for George Davis and Ed. Hardy, dated July 8, 1902. George Davis carried his wife with him to the Kinder Lou plantation. Another check for $40, dated August 11, 1902, payable to T. J. McClellan, in payment for John Westley Brown. A third check was dated December 15, 1902, payable to T. J. McClellan, for $240, for "four men and one woman."

The two boys charged with stealing a watermelon were kept at McRee for 6 months and 10 days each, and Lula Frazier, the woman who had not been convicted of any offense, was kept there for 7 months.

The McRees at that time operated a large plantation in Lowndes County, about 70 miles from Waycross, where these parties were confined in jail. They also operated a large crate factory. About 200 hands were employed by them, many of them obtained in the manner above described. The negroes were worked under guard, locked up at night, whipped by overseers, and made to work out the money advanced to them. They were not permitted to leave the plantation. Some escaped and were captured; some made good their escape. The prison commission of Georgia made an investigation of the conditions at the McRee plantation a short time before these indictments were returned, and, as Mr. E. J. McRee stated, "did not exonerate us entirely."

It is claimed that this evidence did not connect the defendants with the charge of peonage.

Complaint is made that in denying a motion to dismiss when the Government rested its case the judge in the presence of the jury expressed an emphatic opinion that there was sufficient evidence to go to the jury, but in that connection, he told the jury that they must not be influenced by anything that he said and that he did not express any opinion as to the truth of the evidence, but simply assumed it was true for the purpose of the motion (p. 534). The only other complaint is that the judge suggested to one of the counsel for the defense, Mr. Toomer, that if his client pleaded guilty he would make the punishment light, a fine of $500 without imprisonment, though the statute provided for not to exceed a fine of $5,000 or five years in prison. The complaint is that in making this offer the judge refused to say what he would do should the defendants be convicted by a jury. This refusal is magnified into a threat. Mr. Toomer, who asked the question, and who was the only one present, says that he did not get the impression that any threat was intended (p. 596). The defendants accepted this offer, and now come in and pose as the "injured victims" of coercion. This is certainly a strange grievance. I have known of a number of cases where the court would intimate the punishment that would be inflicted upon a plea of guilty, but I have never known a court to make a contract before trial what the punishment would be in the event of conviction by a jury. Such a contract would be clearly improper, as it would deprive the court of an opportunity to fix the punishment in accordance with the testimony adduced on the trial. The complaint that a witness for the Government, McRay, was mistreated is not important. He had pleaded guilty to these charges and the judge had been very lenient with him. As a witness he attempted to shield his associates. The judge warned him of the possible effect of perjury and the complaint is that it had the proper effect (p. 739). The bitterness of Osborn Lawrence and others interested in this case is amusing, and, it might be added, amazing.

ATLANTIC COAST LINE CASE.

In the United States against the Atlantic Coast Line Railroad the majority report finds that the judge falsified the record of the proceedings. This finding is based upon the oral testimony of two of the disappointed attorneys in that suit. Even this testimony shows clearly that there was no falsification of any record. The court simply ascertained from one of the attorneys for the defense that he had in his possession in court certain written evidence wanted by the Government, and thereupon made an order requiring that the evidence be produced. No one disputes his right to do just what he did do, but the attorneys attempted to show that the court said the evidence was produced voluntarily.

The stenographer's record does not bear out this claim. The judge in his statement denies that he made any such statement, and the whole record clearly shows that no such construction can be placed upon whatever he may have said. The objections and exceptions of the defendant's counsel are fully set out in the record. The finding that the judge's action deprived the attorneys of an opportunity to appeal is too ridiculous for serious consideration. They do not deny that the judge had a right to make the order that he did make with or without their consent; they could not possibly be

injured whether he used the word "voluntarily" or not. For further discussion of this charge see pages 1065 to 1068.

The George L. Murphy case is discussed in pages 1026 and 1027. There is nothing in it beyond the fact that the judge was overruled by the circuit court of appeals in holding that Mr. Murphy had pleaded himself out of court. While the judge was no doubt wrong in his view of the law, there is nothing to suggest that he did anything intentionally wrong.

BRANEN AND CHAUNCY PEONAGE CASE.

In the Branen case the defendant was indicted for peonage. This was another of those cases where public feeling ran very high. The case had been selected for prosecution by the Attorney General of the United States. Parties interested in peonage contributed to the payment of Mr. Felder's fee; he was the attorney for the defense. After the defendant had been acquitted, those interested in the defense arranged to have a barbecue to celebrate their victory. To this the jurors were invited. Complaint is made that the judge persuaded the jurors not to attend by publishing in one of the Macon papers a protest against the propriety of such action.

Judge Speer testified (p. 899) that Branen on being acquitted went straight home and found a negro that had induced a woman whom he held in peonage to run away while he was in Macon where the case was tried. He went to a gathering of innocent negroes where the young negro was, arrested him, stating: "I will show you how to fool with my hands." Took him over to Dodge County in a graveyard, strapped him down to a log and beat him to death, then took his body back into the big road as a warning to others. This was Mr. Felder's client, the one for whom he makes his complaints. This was race war, and Felder is thoroughly imbued with its spirit, and is not only bitterly hostile against any judge that will attempt to enforce the Federal peonage law, but against the peonage law as well. A number of complaints are made, such as limiting the number of witnesses as to character, keeping the witnesses separate, preventing the defendants from being at large during the trial and stopping the defendant's attorney from appealing to race prejudice. None of these can appeal to anyone with any experience in court. They are all matters within the discretion of the judge. As nothing appears in the case to indicate that the judge was influenced by any improper motive it is a far-fetched conclusion to find an abuse of discretion upon such testimony as that of Mr. Felder, and he does not attempt to state any facts that would warrant such finding; he only gives an expert opinion.

The Chauncy peonage case presents pretty much the same complaint as that of Branen's. This is discussed in the judge's brief (pp. 1047 and 1048) and needs no further comment.

THE ROBERTS, KELLY, HARRIS, AND TIFT CASES.

The Roberts case is briefly discussed in the judge's brief, page 1076. In this case two attorneys, who appeared for the defense, Col. J. W. Preston and Judge W. D. Nottingham, testified. One criticizes the judge's course, the other says he could not say that

the judge did anything improper in the case. Col. Preston also criticized judge's conduct in the case of Deputy Marshal Kelly, but this criticism only indicates a difference of opinion as to what the facts in the case tended to prove. (See pp. 1019–1022.) In neither case is there any suggestion that the judge was actuated by any improper motive.

The complaint of Mr. Walter A. Harris that the judge refused to consider a demurrer because it did not have a certificate of counsel is like much of this oral testimony in regard to court proceedings. There was no demurrer in the case. The case of Johnson *v.* The Southern Railway Co. was dismissed because one of the jurors became sick during the trial. It is claimed that this juror afterwards stated to Mr. Harris that he was not sick. Mr. Harris testified that the juror said he had been sick, but it would appear that the stenographer who reported the testimony did not get this evidence correctly. This error is, however, immaterial. The statement is hearsay. There is nothing in the record to indicate that the judge had any reason to believe that the juror was not in fact sick. Under the circumstances it was within the discretion of the court to dismiss the action, and as the railway company settled the case later the discretion was probably not abused. (See as to these complaints pp. 995–997.)

In the case of Tift *v.* The Railway Co. it would appear that the judge was trying to protect shippers who had been charged by that company excessive freight rates. Whether he was justified in making the order complained of does not appear. The fact that the case was settled after it had been appealed to the circuit court of appeals throws no light on the subject, as the terms of the settlement were not put in evidence.

RULE AGAINST ATTORNEYS OF TIFTON.

In giving a summary of the testimony of Mr. R. C. Ellis and J. S. Ridgley it is surprising that so many of the essential facts have been omitted. This was a bankruptcy proceeding in which it was charged by the referee that certain attorneys at Tifton had intentionally deceived him into declaring a dividend that they knew he ought not declare. The referee certified to the district court (Judge Speer presiding) that the dividend had been erroneously computed by George E. Simpson, Rodley D. Smith, and J. B. Morrow, all attorneys of record in this case, while the referee was engaged in the trial of a case in the superior court of Dougherty County, and that it was due to their representations and express assurances that they had correctly figured the dividends that the referee declared an excessive dividend and countersigned the vouchers made payable to the above attorneys. That the referee had allowed them to make this calculation in order to extend to them a personal courtesy and enable them to catch trains for their homes. That it was not until the referee returned to his office and verified the figures that he discovered that claims which aggregated $11,743.43 and which had been duly allowed in open court at Tifton, Ga., at the first meeting of creditors in the presence of these very attorneys and over their objections and arguments had for some inexcusable reason been thrown aside and were not permitted to share in the equal distribution of the assets (pp. 301).

The referee further certified to the court that these attorneys had refused to repay the money and were in contempt of court and should be punished for such contempt and committed to prison until they repaid the amount that they had deceived the receiver into paying in excess of the amount to which they were entitled. Either this request of the referee or some remark made by the judge in commenting upon it was seized upon by some of the newspapers and published as an order from the court that all the attorneys at Tifton should be arrested, and the complaint is that this injured the attorneys. No order for arrest was issued and none of the attorneys were arrested. An order was simply issued requiring these and other attorneys to whom these excessive payments had been made to show cause why the excess part of these payments should not be returned or the parties punished for contempt. The court in issuing this order acted upon the findings of the refereee. He was not required to go into the pleadings, evidence, or proceedings had before the referee, as he did not undertake to adopt the findings of the referee as his own, but simply used the findings as a complaint upon which the order to show cause was issued. This instead of being drastic was liberal treatment of these attorneys as it gave them an opportunity to present fully their defense. When the defense was submitted, the judge at once and in open court announced that they could not be held. The finding in the majority report that the referee was not properly bonded is in line with the general policy upon which this report proceeds. There is not a word of testimony to that effect from anyone who claimed to have any knowledge on the subject. There is only a statement by one of the witnesses that he had heard a rumor to that effect, but perhaps that is sufficient if it tends to discredit the judge. This case presents another illustration that is instructive. It is found in the report that Ellis testified that the judge was willing to let a Mr. Timmons pay back more than his share, so that he would not be treated the same as the other creditors, and that in that connection Ellis said that the judge had just announced "that every man should receive justice in his court and all should be treated alike." Why, if this testimony was considered worthy of a finding, did not the majority report show, as the evidence clearly shows, that no such discrimination was permitted? The order made in this matter was read into the record as a part of Mr. Ellis's testimony (p. 302). Why was it omitted from the findings? Was it because it would spoil the effect of Mr. Ellis's testimony on that point? See, for a further discussion of this case, pages 998 to 1001.

COMPLAINT OF W. E. SIMMONS.

The complaints of W. E. Simmons relate to matters that occurred more than 20 years ago. In both the Gay and the Tarver cases it is evident the judge was seeking to protect the defendants against the oppressive and unconscionable conduct of Mr. Simmons's clients. These were both usury cases. The facts in the Gay case, as detailed in the judge's brief, the only evidence in the record as to the facts, shows clearly that there is no merit in this complaint (p. 989). In the Tarver case, notwithstanding Simmons's bitter criticism of the judge because he hesitated to sign the consent decree and afterwards sought to require Mr. Simmons's client to give Mrs. Tarver a hearing

before the decree was put into effect, it is apparent that Judge Speer, though perhaps technically in error, was only striving to secure justice for Mrs. Tarver. Judge Nottingham testified (p. 351) that this decree was finally set aside because Simmons's client had overreached her in securing it and that she eventually recovered 640 acres given to Simmons's client by this decree. In the light of this testimony there is perhaps some reason why Mr. Simmons should be bitter; some reason why he should be reckless in his statement, as he evidently was, in omitting this important explanation as well as in testifying in regard to Mr. King's loan to Judge Speer.

In his effort to show that the judge had borrowed from the clerk, Mr. King, money belonging to the court, he multiplied by more than four the actual amount of cost that he recovered back from Mr. King, apparently so as to make it appear that Judge Speer's note of $1,200 was made up of this cost, though the court records showed that all court costs ever returned to Mr. Simmons aggregated less than $400, and these were returned long before this note was paid, as appeared by the original bank draft and letters in evidence showing the payment. There is nothing to indicate any connection between this note and these costs. To aggravate the matter and add a touch of pathos he manufactures a widow for a man still living and who afterwards died a confirmed bachelor. Strange that his memory should play such fantastic tricks. Was it lack of memory or an excess of malice. Perhaps in justice to Mr. Simmons, it should be added that nearly all of this story is hearsay, according to his own testimony. Still, it is hearsay of a class that he knew that no honest man could consider in passing judgment upon another.

CHARLES CRAIGE AND OHLSEN CASES.

Mr. Colding complains that in U. S. *v.* Charles Craige the judge criticized the evidence of the Government and practically directed a verdict for the defendant, who was acquitted. This criticism is approved in the majority report. Evidently Colding's admission that the verdict was correct must have been overlooked in drawing this report, as it is omitted from the summary of the evidence. There is not a single fact in this case upon which to base a reflection upon the judge. (P. 687.) The Ohlsen case needs no discussion. (P. 1076.)

PARTNERSHIP OF ISAACS & HEYWARD.

The majority report finds that Judge Speer was a party to the formation of the partnership between Isaacs and Heyward, although the judge denied it in his evidence and there is not a word of testimony to support the finding. Considerable time was spent in trying to establish that this was a fact and there is in the record some "Window in Thrums" evidence upon which the conclusion must rest. They did prove that some days before the partnership was formed the judge did actually talk to Mr. Heyward and to Mr. Isaacs, but no one testified as to whether it was the last presidential election they were discussing or not. Still, of course that is not material, and having thus established by such conclusive evidence that the judge was a party to this conspiracy on the part of Mr. Isaacs and Mr. Heyward, it follows naturally and logically that he

became particeps criminis in all the high crimes and misdemeanors that this firm might become guilty of. No doubt it was on that theory that evidence was introduced to show that Mr. Isaacs had, since this partnership was formed, been indicted for barratry. If this was material it might be mentioned that this firm has been dissolved.

In the foregoing I have attempted to cover every complaint made against the judge that rests on anything outside of mere abuse, or general assertions such as that he is eager for power, arbitrary, unjust, unjudicial, or the like. This is nothing more nor less than evidence as to character and can only be met by evidence of a like character. As the majority report rests largely on this class of evidence, it would seem but justice to the judge that the indorsements attached to his brief should have been printed. In printing the brief in the record these indorsements were omitted. In view of the character of the findings I shall take the liberty of printing a few of these. Before submitting these indorsements some general observations may be pertinent.

In the majority report an attempt is made to account for the bitterness shown by a number of witnesses who testified against Judge Speer by calling attention to the fact that he was appointed as judge by a Republican President and because it is said that he has participated in Republican politics. This latter statement rests upon the evidence of that incomparable witness, Mr. Barnes. This statement is, however, flatly contradicted in a letter from Mr. Lyons, former register of the United States Treasury, for whom Mr. Barnes says the judge devoted his political activities. While it is true that politics plays an important part in this persecution, party politics is only one element. This record bristles with facts that unmistakably point to matters less creditable than politics. The one thing that above all others has stirred sentiment against Judge Speer is his conduct in trying peonage cases, and in this class of cases may be included the Jamison habeas corpus case. That he should dare to hold the State statute, under which peonage is practiced, void as in contravention of the Federal Constitution is an unpardonable offense. That peonage does exist in Georgia and that it is eagerly cherished by many people no one can doubt who reads the record in this case.

A few days ago I received a newspaper from Georgia containing what purports to be an account of a speech delivered by Attorney General Felder, one of the witnesses against the judge. In that speech Mr. Felder appeals to the voters in behalf of his candidacy for the United States Senate on the ground that he is in favor of the repeal of the Federal peonage law. This issue could not be popular unless there is strong sympathy for this barbarous institution, which is nothing more nor less than slavery. After you have eliminated the peonage cases, including the Jamison habeas corpus case, the Green and Gaynor case looms large as a favorite text for abusing the judge. These cases are pushed to the front, and those who participated in them are the fiercest of the judge's truculent foes. These form the center of the Macedonian phalanx directed against the judge. Back of these is a surprising array of corporation counsel. Look at the list:

A. R. Lawton, vice president and general counsel, Central of Georgia Railway Co.

P. W. Meldrim, division counsel, Atlantic Coast Line Railroad Co.

Stanley S. Bennett, division counsel, Atlantic Coast Line Railroad Co.; general counsel, South Georgia Railroad.

L. W. Lambdin, division counsel, Atlantic Coast Line Railroad Co.

John W. Bennett, division counsel, Atlantic Coast Line Railroad Co.

Alexander Akerman, special counsel, Atlantic Coast Line Railroad Co., and assistant general counsel, Macon, Dublin & Savannah Railroad (controlled by Seaboard Air Line Railroad).

Minter Wimberly, general counsel, Macon, Dublin & Savannah Railroad.

W. A. Harris, division counsel, Southern Railway Co.; division counsel, South Central Railroad.

George S. Jones, counsel, Georgia Railroad and Louisville & Nashville Railroad.

A. A. Lawrence, counsel, Southern Railway Co. and Street Railways of Savannah.

W. W. Osborne, counsel, Southern Railway Co. and Street Railways of Savannah.

W. C. Snodgrass, president Blakely Southern Railroad, connecting with Central of Georgia and Atlantic Coast Line Railroads.

Boling Whitfield, division counsel, Atlanta, Birmingham & Atlantic Railroad Co.

S. B. Adams, counsel, Merchants & Miners' Transportation Co., Naval Stores Trust, and other corporations.

J. R. L. Smith, president Flovilla & Indian Springs Railroad, short line connecting with Southern Railroad.

W. E. Simmons, attorney for the Corbin Banking Co. and other corporations.

Why are these witnesses opposed to the judge? The reason is not far to find. The record discloses that in several instances the judge has offended attorneys for these corporations: In the Rankin *v.* Louisville & Nashville Railway Co. case, the United States *v.* The Atlantic Coast Line case, the Central Railway Co. case, the McReynolds *v.* City & Suburban Railway Co. case, the Holst *v.* Savannah Electric Co. case, the Tifft *v.* Southern Railway Co. case, the Johnson *v.* Southern Railway Co. case, and others, complaints are made on behalf of these corporations by their attorneys. In every one of these cases it is apparent the judge strove to do justice. The complaint of W. E. Simmons is another illustration. As attorney for the Corbin Banking Co., a firm famous for its usurious exactions even as far west as my home, he was not looking for justice, that was the last thing his client wanted. Judge Speer tried to give him what he was honestly entitled to and he fled from his court and has not quit cussing the judge even unto this day, though that was more than a score of years ago. It may be easily guessed that the judge's record on labor and trust questions is not very enthusiastically approved by these men. In Waterhouse *v.* Comer (55 Fed., 148) Judge Speer, for the first time in the history of our jurisprudence, recognized the right of labor organizations. His opinion in that case was printed as a Senate document. In the case of Farmers Loan & Trust Co. *v.* Central of Georgia (166 Fed., 333) the receiver of that railway had without just cause discharged a conductor from employment on the road. The conductor

appealed to Judge Speer's court for relief. Over the vigorous protest of Mr. Lawton, one of these railway attorneys, now a witness against the judge, he reinstated the conductor and condemned the unfair practice of the receiver. In the Erie Lumber Co. case (150 Fed., p. 807) will be found another opinion of Judge Speer of inestimable value to labor in protecting wages. Mr. George L. Jones, another railway attorney who testified against Judge Speer, opposed this view of the law. Shortly after the Federal employees' liability act was passed it came before Judge Speer. It was attacked as unconstitutional by this same Mr. Lawton. Judge Speer, however, not only sustained its constitutionality but commended it in very vigorous language. With such a record it is not surprising that some years ago Grand Chief Engineer P. M. Arthur and Assistant Chief A. B. Youngson, acting for the brotherhood, strongly commended the judge for promotion to the circuit court of appeals. But these are not all the grievances corporation counsel have against Judge Speer. In the Naval Stores case (reported in 151 Fed., 834) this trust was indicted and convicted. It was claimed upon the trial that under the operation of this trust the people of southern Georgia had been robbed of more than $40,000,000. Mr. Adams, a railway attorney and witness against the judge, strove to avert this conviction. In the case of United States *v.* Merchants & Miners' Transportation Co. (187 Fed., 355) rebates were given in violation of the interstate-commerce law. The company was convicted and fined $30,000. This same Mr. Adams was again of counsel for the accused. In United States *v.* Miller (187 Fed., 355) Mr. Miller, who was the beneficiary of the rebates, was fined $5,000. Messrs. Osborne & Lawrence, who testified with exceeding bitterness, were of counsel for the accused.

In the case of Tifft et al. (123 Fed., 789, and 138 Fed., 753) Judge Speer enjoined the exactions of excessive rates on lumber and by final decree compelled the repayment of more than $2,000,000 to shippers. The same Mr. Lawton was of counsel in opposition to this decree, which was affirmed in 206 United States, 428. This case affected every railroad represented by the attorneys who testified against the judge. Osborne, Lawrence, and Meldrim were all of counsel in the famous Green and Gaynor case. These parties were convicted for embezzlement of Government funds amounting to about $2,000,000. Their animosity toward the judge for his conduct in that case is extreme. It was, however, approved on appeal both in the circuit court of appeals and the United States Supreme Court. Is it not strange that none but disappointed attorneys and their clients should have been called in this inquiry? Why, outside of Barnes, who was discharged from the office of marshal of the district because he threatened to kill the judge, that is what they are with hardly a single exception. If the attorneys or parties who appeared on the other side in these suits or proceedings had been called, is there any doubt that the testimony would have been favorable to the judge? The fact that this testimony was not produced is almost as conclusive on that point as anything can be. Every piece of gossip from almost before the war down to the last edition of some newspaper that did not get the last bankruptcy notice to publish was dragged into this hearing.

It is perfectly evident that there is a motive behind this proceeding that does not rest on the highest order of disinterested patriotism.

After these charges had been made against the judge the Valdosta Times, on December 21, 1912, edited by Mr. C. C. Brantley, now editor of the Macon Telegraph, published the following editorial:

A FIGHT ON JUDGE SPEER.

The grand jury of the United States court concluded its work in Valdosta yesterday by passing some resolutions putting itself on record as being opposed to the proposition to emasculate the southern district of Georgia and the creation of another division. It is generally understood that this movement was started for the purpose of trying to get rid of Judge Emory Speer and that it is backed up by some men who are antagonistic to Judge Speer because of the fact that he does not look with any degree of allowance upon the misdeeds of the high any more than he does on the wrongdoings of the humble.

Judge Speer, though affiliated with the Republican Party, is a judge of the strongest democratic tendencies and spirit. He nearly always takes sides with the weak against the strong. The men who have been in his court have been impressed with the fact that humble offenders are shown the greatest consideration by him. He has adopted a system of handling cases against moonshiners that has had a splendid effect, though he has not had to impose any severe penalties upon them.

Several years ago, when Judge Speer wanted to try the Green & Gaynor case, he went away from the scene of their operation and influence to get a jury to try them. It is said that they had strong friends who wanted them tried by a jury nearer home, believing that they would gain much in that way.

Later on Judge Speer had a round with the Naval Stores Trust, which was composed of large influences in and around Savannah, and it is said that these influences have been busy ever since trying to get rid of him. They are supported, of course, by the friends of the other culprits who have had to suffer because of Judge Speer's strong stand against "crime in high places."

The Times believes that the grand jury on yesterday expressed the sentiments of a large majority of the people of south Georgia in protesting against the proposition to tear up the southern district and to remove Judge Speer from the place which he now occupies with so much firmness, yet tenderness, in dealing with criminals of all types.

The resolutions which were adopted yesterday are printed in this issue of the Times, and we commend them and the spirit behind them to our readers.

Are these charges against those who make these complaints true? Has the hostility shown upon this hearing been nursed into being?

As late as May, 1913, Mr. Akerman, the district attorney and one of the judge's bitterest enemies, expressed the highest regard for the judge (401). In 1910 the Bar Association of Macon tendered to Judge Speer a banquet on the twenty-fifth anniversary of his appointment as judge. At this, which was largely attended by the bar of the district, the kindliest feeling toward the judge appears to have existed, as is evidenced by the newspaper accounts of the occurrence. He was eulogized in the most flattering manner. This would clearly demonstrate that less than four years ago public sentiment was friendly to him. Five years earlier the bar association met at Macon and passed resolutions commending the judge. In these resolutions they emphasize by inserting as the first resolve:

> That in the decision of cases in his court he has known neither the rich nor the poor, and that in the enforcement of the criminal laws he has tempered justice with that mercy which blesses him that gives and him that receives.

The Chamber of Commerce of Macon at this time, by resolutions presented to him, offered this tribute:

> We recall with a great deal of pleasure:
>
> First. That it was he who reorganized the jury system in these courts and eliminated the professional and unworthy jurors.
>
> Second. Through his administration the criminal laws of the United States have come to be respected by all classes in this jurisdiction and justice is done to the mightiest as well as to the lowliest lawbreaker. The reform wrought by Judge Speer

by crushing the great system of land piracy which once cursed this State has done a great deal to encourage immigration into Georgia and facilitates the work of the chambers of commerce and other commercial organizations in bringing investments into this section.

Third. We appreciate the fact that his great power, used as it has been used, has proven a protection for the State against men of enormous wealth and influence who have at times sought to increase their riches through crimes of the greatest magnitude.

Fourth. We are especially appreciative of the fact that the court has from time to time, on proper pleadings, taken charge of insolvent corporations involving great values, and through the skillful selection of receivers and by constant guidance brought about a reorganization of the properties and a restoration of their values, thus preventing untold losses in the community.

Fifth. We note with considerable pleasure the fact that in the administration of the bankruptcy law the records of the Attorney General's office show that in Judge Speer's district there is a maximum of net assets, homestead exemptions, priorities paid, and dividends distributed, while the same records show a minimum of cost of administration comparing most favorably with any district in the Southern States and with any district in the United States.

Sixth. It is also with pride that the people of Macon recall that within his 20 years on the bench Judge Speer has been reversed for his rulings in only one jury trial, and that in a large majority of the appeals in cases of all classes his decisions have received the approval of the Supreme Court of the United States and of the circuit court of appeals; and we find among his most ardent admirers the highest representatives of labor on one side and of capital on the other.

In 1906, at a banquet tendered Judge Speer at Savannah, Judge Carlton (now and for a long time judge of the superior court in that city) paid to Judge Speer an eloquent tribute. I copy from this the following:

And throughout the vicissitudes of his career—as soldier, as politician, as lawyer, as judge—he has loved his State and her people with a tenderness which is as pronounced to-day as it was when as a boy he took his chances, for their sakes and their honor, in the fighting line. His broad culture, his signal ability, the delightful humor which oozes from him as did Greek from Gladstone, his grace of oratory, are all known to you. But greater than these—perhaps the greatest dignity which can come to a man—is the humanity which has marked his judicial career.

There is no court in the land where the administration of justice is characterized by more dignity, and there is no court wherein the humble and the helpless are safer. The far-reaching effect of the Jamison case has not only struck a decisive blow at the unmerciful dispensation of unregulated justice—it has brought its administration by subordinate tribunals to a sense of proportion and laid upon them the humanizing touch which brings consideration for the casual errors of the weak and the poor and the friendless, and this is the straight path to the highest civilization it is given us to reach.

It is a signal tribute to his administration of his high office that whilst in this district population has increased and human frailties are the same; there is less crime than when he came upon the bench and fewer Georgians in Federal prisons.

Because of all these things—because of any of them—may time so lightly touch his heart that as the richly laden years shall pass along content shall follow in their wake, and friends be near, and hope and fame and peace.

In 1903 Judge Speer was a candidate for promotion to the circuit court of appeals. At that time he received the indorsement of nearly all of those who testified against him at this hearing. Some of these indorsements are significant. The one from the Savannah bar, which bears the signature of Meldrim, Osborne, Lawrence, Lawton, Cunningham, Saussy, Gazan, and many others, contains this language:

The long and faithful service of Judge Speer on the bench of the district court, during which time questions of the utmost moment have been settled by him with unusual ability, indicates him as preeminently fitted for the new honor with which his name is now associated.

During his administration this community has not only benefited by the singular ability and clear thought which he has brought to bear upon the issues which have been submitted to him, but our observation justifies us in declaring him one of the

most humane of judges. During his term not only has crime diminished but his eloquent charges to the juries impaneled in his court have done more than any other influence to make the people of Georgia feel that the Federal court is one of their own institutions.

The variety of novel points which have arisen in the cases tried by him, many until then undetermined, have demanded an acuteness of intellect and patience of research rarely exacted in the judicial career of any judge. His success in this direction, illustrating his preeminent fitness for the bench of the circuit court, is of record in the published reports; the daily evidences of usefulness to the public and consideration for the misguided and helpless are matters to which it is just that we should invite your attention since they appear only inferentially in the plain statement of judgments.

The business men of Savannah furnished this tribute:

During his long service as the judge of this district the proceedings of his court have been marked with a dignity which has commanded respect, and his firm and humane dispensation of the law has at once diminished crime and tempered its consequences to the ignorant and the lowly. His quick and clear apprehension of the intricate constitutional and commercial questions which have been constantly submitted for his adjudication, has invited the confidence of the business public, and the patriotic utterances, expressed with a singular and forceful eloquence, with which, from time to time, he has recalled to the people of this State the great priciples which underlie the Republic have had an influence for good, far-reaching and permanent.

The Augusta bar expressed this opinion:

We desire to bear testimony to Judge Speer's great learning, scholarship, and distinguished ability. As a judge, his greatest characteristic is perhaps his love for substantial justice and equity. It is a common saying among the profession in the southern district of Georgia that no innocent man is ever convicted in his court, and the guilty rarely escape. The lawyer with a meritorious cause does not hesitate to enter his court, while those with bad causes are usually wise to avoid them.

The business men of Augusta testified:

We have known Judge Speer personally for many years. He is a man of unquestioned ability, absolute fairness and impartiality, and has always undertaken to conserve the interests and rights of persons and property when they have been committed to his care.

Like indorsements came from his own town, Macon, and from other places in his district. In addition to this, he was indorsed by the city of Atlanta, not in his district, and by a great many public men in different sections of the country. It is significant that many of the complaints now presented were then known to the men who now so bitterly condemn him. That the judge has at all times been very humane and has striven earnestly to preserve the rights of the poor and oppressed as against the rich and powerful stands out prominently throughout this record. It is one of the things that appealed to those who signed these indorsements. It is the one thing for which he has been most severely criticised in this inquiry. Still there is no showing that any injustice has been done to anyone. The complaint against the judge for being unfair is due almost entirely to the viewpoint of the lawyers making the complaint. In Georgia a judge of the State court can not comment upon the testimony in charging a jury, while under the Federal practice it is the duty of the judge to aid the jury by summing up the evidence, just as is done in the State courts of my State and in a great many other States. Against this practice, which has aided in sending rich clients of those who complain to jail, they protest vigorously. Lawrence, speaking of the judge, gives vent to this complaint (52304):

He should never have been a judge; he has not got the judicial temperament; he has not got the judicial mind; he has not got the judicial character. I believe if he had remained at the bar he would have made one of the greatest advocates that ever

lived, because he is talented in that line, and talented as I have never seen anybody else. He is the best cross-examiner of a witness I have ever known; he knows the jury, knows how to play on their passions, on their prejudices, as no living man that I have seen could do it; he has a faculty for marshalling evidence that I have never seen another living man able to marshal; and in that Green and Gaynor case he charged that jury for eight hours, and I will challenge any six prosecuting attorneys in the United States, from the Attorney General down, all of them together, to take that mass of testimony taking three months' time that Judge Speer heard, and then put it down in as ingenious an argument against the defense as Judge Speer put it in that thing. It was a masterpiece of oratory, but a very poor thing when you come down to look at it from a judicial standpoint.

Despite this condemnation the circuit court of appeals and the Supreme Court approved the charge. I have had some experience in practicing law under both systems, and have no hesitation in indorsing the Federal practice in preference to that which prevails in the State courts of Georgia. I have never heard anyone but a lawyer complain because the judge in charging the jury in a Federal court is required to point out the questions to be decided by the jury and call attention to the evidence that has a bearing on these questions. That this practice greatly assists the jury in arriving at a just verdict no one can doubt. Under its restraining influence lawyers find it to their advantage to try cases fairly. They know that any appeal to passion or prejudice or appeals to misleading or irrelevant matters will be promptly rebuked in the court's charge in a fashion that may tend to prejudice their client's case. They find it necessary to appeal not only to the jury but also to the judge.

It takes 13 men to steal a man's home in the Federal courts, while it may take only 12 under such a practice as that which prevails in the State courts of Georgia. The Federal practice is the old English practice, and it can not be said that it invades the province of the jury, as that institution was handed down to us. The Georgia practice gives a lawyer of superior ability a great advantage over his less fortunate competitor, but that advantage is at the expense of justice. In these days when reformers are proposing to abolish the jury system because of its alleged inefficiency it would hardly be safe to weaken it.

When it is remembered that none but men with a grievance were sought in this investigation, it is surprising that the record does contain some very striking indorsements.

Mr. Preston, one of the oldest attorneys at the Macon bar, testified that in some respects Judge Speer was the finest presiding officer he had ever seen. He added that the judge's exalted intellect and his splendid manner on the bench always impressed him. Judge Nottingham, speaking of the judge, said:

I have shot off my mouth about the judge, as all lawyers do. That is one of the usual things in the profession. It soothes our clients. When I came to Macon in 1888 to practice law, Judge Speer had been on the bench for two or three years perhaps. I found nearly every member of the bar criticizing him. The burden of the cry was, "Damn Republican. We want a Democratic judge sent in to help the party in north Georgia." I found the feeling pretty bitter even when I undertook to be his master in chancery. But the judge gained in popularity, and in less than two years, when Mr. Lamar died on the bench, I took a petition around for him and got all but 15 of the 45 members of the bar to sign it.

In regard to the charges of favoritism and antipathy to certain lawyers, I have never encountered any trouble of that sort. In the 40 years I have practiced at the bar, I have heard just as grave charges against the judges of the Superior bench of this county. I have heard them charged with favoritism. Even dear old Barnard Hill, it was charged, had a school of favoritism in Anderson, Hill & Harris, and he was even insulted in open court as being a member of that firm. You could meet one man and

he would tell you Judge Speer was unjust, unfair, and tyrannical. Of course he has made strong friends and bitter enemies as every man with a strong personality must.

Minter Wimberley, speaking of Judge Speer, said:

When Judge Speer was appointed judge of this court, he cleared out the Augean stables. If there ever was a court that was a den of infamy, it was the Federal court of this district at that time, in my opinion. When Judge Speer did clean out this court, I felt the deepest gratitude to the judge as a citizen and as a patriot, if I may be permitted to class myself as such. Judge Speer did me once a personal favor and I never forget a personal favor. I took the first petition around Macon. I wrote it myself in the effort to put him on the Supreme bench of the United States. The feeling against him in some quarters was very intense; that was 15 or 20 years ago. I have known Judge Speer to do a great many beautiful acts of mercy to the oppressed.

Speaking of the judge's conduct in the Jamison case, Mr. Wimberley said:

I do not want to use the witness stand as a way to punish him for a fancied wrong. He thought he did me right; I thought he did me wrong.

At another point in the evidence he said:

The judge has been exceedingly kind to me and maybe in other cases he has not, and I did not expect him to be any kinder to me than to anybody else but at no time did I think he did the other side an injustice when he decided in my favor.

Then again:

Except in the Jamison case—I am speaking for myself—I got fair and just treatment and I do not know of my own personal knowledge of any other case in which I can say he did anybody any injustice.

Mr. J. R. L. Smith, after giving an unfavorable opinion of the judge's conduct, was asked on cross-examination, "Can you recall and cite a single judicial opinion of Judge Speer in which any human right or any Federal statute was violated or any right either of person or property denied to anyone?" To this he answered, "Not at this time." Mr. Toomer, page 605, gave this opinion of the judge:

I have, while I have heard some slight testimony to the contrary, always had the impression that Judge Speer was a very hard worker. He certainly worked out very promptly and thoroughly every case that I ever had any personal knowledge of when I was representing the Government, as I have done in a number of cases, or the defendants, or in civil cases; I think that the judge is a judge of commanding capacity. I think that his capacity as a lawyer and as a literary man as well is simply superb.

I have never been able to convince myself, after 20 years of my knowledge—and he has never done me a financial favor in his life—I have never been the recipient of an appointment that meant one dollar to me, from him; I have tried cases that I lost in his court, but I have never been able to think that Judge Speer was not personally honest and judicially honest. I will go further and say this, that while there are some men—we all have our peculiarities—I know some very distinguished members of this bar who have grievances of manners, and this and that and the other kind, against Judge Speer, my own opinion is that the rank and file of the plain people and business men of this district find in Judge Speer and in his court a perfect terror to evildoers, not because of the severity of the sentence he is going to impose, but because of the certainty of their conviction in his court.

Since the hearing was held in Georgia, I have received a large number of letters and affidavits from lawyers, bankers, and business men residing in different sections of Judge Speer's district commending the judge in the strongest terms, and he has since been reelected dean of the law school of Mercer University. The jurors attending the various divisions of Judge Speer's district in 1913 protested against the project of dividing his district, and in that connection strongly indorsed Judge Speer, showing clearly not only friendly feeling toward him, but confidence in his ability and fairness as a judge.

While I concur in the recommendations made in the majority report, that no further proceedings be had upon the charges against Judge Speer, I desire to express in as emphatic language as possible my protest against the methods that have been pursued; but I desire to have it distinctly understood that I do not criticize the motives of my associates; for them I have the highest personal regards. In this investigation no effort was made to protect the judge against mere slander and abuse that could serve no other purpose than to disgrace and humiliate him. Every enemy that 29 years on the bench had produced was invited and eagerly encouraged to detail his grievance and to supplement that with all sorts of innuendoes, insinuations, and insulting opinions, utterly illegal as evidence and incompetent for any proper purpose. To add to this, the methods pursued in framing the majority report is equally reprehensible. It is apparent throughout that nothing has been considered pertinent that did not support some charge against the judge. As matters of explanation or denial do not meet this requirement, they are quite generally omitted, not only from the findings, but also from the summary of the evidence. Still this is not all. Although the majority report announces that there is not sufficient evidence to support any of the charges, that announcement is in the nature of a "Scotch verdict," or worse, because it is accompanied in almost every instance with an insinuation that the judge may be guilty, notwithstanding such finding. If anything could be more unfair or unjust, it is difficult to imagine what it could be.

It is humiliating to read this record and have to admit that a committee of Congress could consider such methods justifiable. No court in any civilized country would tolerate any such proceedings. The framers of our Constitution sought to give to the judges of our courts a position of security beyond the reach of passion and prejudice so that they might have the courage of their honest convictions. If judges are to be subjected to the treatment accorded to Judge Speer, how can they be expected to maintain that spirit of independence so essential to the just administration of the law?

It is not necessary to say anything in commendation of Judge Speer. The last line in the majority report, recommending no further action upon the charges, is, despite all criticism to the contrary, a complete vindication. It would not have been written if the evidence had pointed to anything worthy of real criticism. In conclusion let me add, the day will come when Judge Speer will be remembered with pride by the people of Georgia, not only for his ability and integrity, but especially for what Mr. Wimberly called his many beautiful acts of mercy to the oppressed.

Respectfully submitted.

ANDREW J. VOLSTEAD.

○